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Director
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Corporate and International Tax Division
Treasury
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Dear Director

SUBMISSION TO CONSULTATION ON REVISED EXPOSURE DRAFT LEGISLATION FOR PUBLIC COUNTRY-BY-COUNTRY REPORTING

We thank you for the opportunity to provide a submission on the above revised exposure draft legislation and reiterate our support for the Government's intention to ensure entities pay their fair share of tax.

The AIA Australia group is a life and health insurer, and part of the AIA Group, which is listed and headquartered in Hong Kong, and operates in 18 markets throughout Asia-Pacific. We provided feedback to Treasury's previous consultation on the Government's tax transparency proposals at the end of April 2023.

We welcome the changes made in the revised exposure draft. These changes reflect the Government's previous commitment to better align the legislation with the European Union's public country by country reporting directive (EU public CbCR).

Key concerns in respect of the revised exposure draft

Notwithstanding these changes, we still have several concerns in respect of the draft legislation:

- The lack of a rigorous process to assess which jurisdictions should be categorised as a "specified jurisdiction" means Australia's proposed public CbCR regime is unlikely to achieve its purpose of improving tax transparency globally. We believe the Government should follow the example of the EU and adopt criteria that are transparent, verifiable and take into account the latest international standards in tax good governance when establishing the list of specified jurisdictions.

- Bermuda, Hong Kong and Singapore have undertaken significant steps in recent years to ensure their adherence to the latest international tax standards in relation to tax good governance, including the OECD's Base Erosion and Profit Shifting (BEPS) Pillar Two reforms. As a result of these actions, these jurisdictions should not be included on the list of specified jurisdictions.

- Unlike the EU public CbCR, the exposure draft continues to require entities to disclose data on: (i) revenue from third parties; (ii) revenue from related parties that are not tax residents of the jurisdiction; (iii) the book value of tangible assets (other than cash); and (iv) the CbC reporting group's approach to tax. In addition, the exposure draft continues to request the disclosure of the reasons for any difference between the income tax accrued (current year) and profit before tax multiplied by the jurisdictional tax rate. Although these disclosures are consistent with GRI 207, they go beyond the requirements of the EU public CbCR and will have a real cost for multinational enterprises, both in terms of additional compliance burden and competitiveness.

Our concerns and recommendations are further elaborated below.

Transparent, verifiable and up to date criteria should be used to identify specified jurisdictions

Under the EU public CbCR, the disclosure of disaggregated data for the 'rest of world' outside of EU member states is limited to jurisdictions included on the EU watchlist on tax co-operation. This watchlist is established through a robust and transparent process involving a global review of each jurisdiction's adherence to the latest internationally agreed standards in relation to 'tax good governance' – a concept used by the EU to designate tax transparency, fair taxation and the implementation of international standards designed to prevent tax base erosion and profit shifting. The EU is also cooperating closely with international bodies such as the OECD Forum on Harmful Tax Practices to ensure that its tax good governance standards remain up to date and incorporate the latest developments in those areas.

The clear connection between the EU watchlist and adherence to internationally agreed tax good governance standards has incentivised many jurisdictions to align themselves on these standards to avoid the consequences of being listed. Incidentally, this approach has allowed tools such as the upcoming EU public CbCR to serve their purpose of improving tax transparency, tax fairness and tackling tax fraud, evasion and avoidance globally.

By comparison, the list of specified jurisdictions presented in the exposure draft does not appear to have been established by reference to any internationally agreed tax good governance standards, but seems instead to rest on unsupported assumptions about jurisdictions "*that are typically associated with tax incentives, tax secrecy and other matters likely to facilitate profit shifting activities.*" In our view, this kind of approach is unlikely to serve the objective of utilising the public CbCR regime to improve tax transparency globally.

The Government could instead align itself with the EU and adopt a robust set of criteria that are transparent, verifiable and take into account the latest internationally accepted standards in relation to tax good governance, for the purpose of determining which jurisdictions should be categorised as a "specified jurisdiction". Our recommendation would also minimise any unnecessary reputational damage or commercial prejudice for multinational entities subject to the public CbCR regime by targeting only jurisdictions that do not actively participate in the international efforts to promote tax good governance.

Removal of Bermuda, Hong Kong and Singapore from the list of specified jurisdictions

As previously indicated, Bermuda, Hong Kong and Singapore have all undertaken significant steps in recent years to ensure their adherence to the latest internationally agreed tax good governance standards. These steps include:

1. Commitment to international tax transparency through tax cooperation

All three jurisdictions are members of the Global Forum on Transparency and Exchange of Information for Tax Purposes (GFTEI), which is the leading international body regarding the implementation of international tax transparency standards.

As members of the GFTEI, each of these jurisdictions has committed to uphold international tax transparency standards through tax cooperation, as evidenced by their signature, ratification, and enactment into law of internationally agreed norms and standards stipulated under international agreements, including:

- The Convention on Mutual Administrative Assistance in Tax Matters
- The Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports
- The Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information.

Appendix I includes the GFTEI's overview of where each of these jurisdictions stands in terms of transparency and exchange of information for tax purposes, based on the GFTEI's monitoring and peer review work.

2. Economic substance requirements in line with international tax standards

In line with the agreed global standard on substantial activities in no or nominal tax jurisdictions, Bermuda introduced economic substance requirements under its domestic legislation effective from 1 January 2019.[1] This

[1] Developed under BEPS Action 5: Harmful tax practices.

legislation also addressed concerns from the EU's Code of Conduct Group (Business Taxation), which conducts screenings and assessments of non-EU jurisdictions.

Hong Kong and Singapore offer taxation incentives that require sufficient economic substance in the jurisdiction. These incentives are not unique to Singapore or Hong Kong and have been successfully reviewed by the OECD and the EU. Moreover, in line with improving tax transparency, both jurisdictions have complied with the BEPS Action 5 minimum standard on compulsory spontaneous exchange on rulings related to preferential regimes.

3. <u>Recent amendments to respective domestic tax legislation</u>

Bermuda, Hong Kong and Singapore no longer appear on the EU watchlist, which is a clear acknowledgement by the EU of their commitments to promote and strengthen tax good governance standards.

This outcome was achieved through active steps by each jurisdiction to address areas of deficiencies:

- Hong Kong was recently removed from the EU watchlist following enhancements to its foreign-source income exemption legislation
- Similar to Hong Kong, Singapore has introduced new legislation to address international tax avoidance risks relating to non-taxation of disposal gains in the absence of real economic activities, as part of Singapore's long-standing policy to align key areas of its tax regime with international norms
- As previously indicated, Bermuda introduced domestic economic substance requirements effective from 2019, which led to its formal removal from the EU watchlist in October 2022.

4. <u>Good faith international actors in the promotion of fair taxation and prevention of tax avoidance</u>

Bermuda, Hong Kong and Singapore are members of the OECD/G20 Inclusive Framework on BEPS. As members of the Inclusive Framework, Hong Kong and Singapore have signed and ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

All three jurisdictions have also committed to the common approach of BEPS Pillar Two. Moreover, Hong Kong and Singapore have each announced their intention to implement BEPS Pillar Two rules – namely, Global Anti-Base Erosion (GloBE) rules and a domestic minimum top-up tax – with effect from 2025. Each jurisdiction is taking active steps to meet this timetable.

At the end of 2023, Bermuda also enacted a new 15% corporate income tax, which will be effective from 2025. The tax base and scope of the corporate income tax largely duplicate the GloBE rules of BEPS Pillar Two.

As the Government may be aware, BEPS Pillar Two is a recent, globally agreed standard that determines what constitutes a fair level of taxation and addresses remaining tax avoidance issues identified under the OECD/G20 BEPS Project. It sets a floor on competition between jurisdictions by ensuring, through robust and extensive tax rules, that large multinationals are subject to a minimum effective tax rate (ETR) of 15% wherever they operate.

By implementing BEPS Pillar Two rules, Bermuda, Hong Kong and Singapore have demonstrated their continued commitment to be responsible international actors, acting in good faith to adhere to the latest international tax standards for the promotion of fair taxation and the prevention of base erosion and profit shifting.

<u>Bermuda, Hong Kong and Singapore should not be categorised as specified jurisdictions</u>

As a result of the active steps undertaken by these three jurisdictions to satisfy the latest internationally agreed standards in relation to tax good governance, we are of the view that none of them should be categorised as a "specified jurisdiction".

Since Australia has been a leading proponent of BEPS Pillar Two on the international stage in recent years, we believe the Government should give significant weight to the adoption of BEPS Pillar Two rules by these jurisdictions in its evaluation. In fact, we consider it appropriate for the Government to adopt the implementation of BEPS Pillar Two rules as one of the primary considerations relevant for establishing which jurisdictions should be classified as a "specified jurisdiction". Pursuing another approach would appear to be at odds with the policy intent underlying BEPS Pillar Two (which is complemented by tax transparency via public CbCR), and would layer an onerous, conflicting, set of requirements onto multinationals with operations in the relevant jurisdictions.

For example, revisions could be made to the draft legislation to exclude a jurisdiction from the list of specified jurisdictions when BEPS Pillar Two rules apply in respect of financial reporting periods commencing on or after 1 July 2024.

Australia should not be an outlier

As noted in our April 2023 submission, the draft legislation imposes greater disclosures than the EU public CbCR in several areas. These disclosures not only impose a greater compliance burden on multinational enterprises, but will also make public commercially sensitive information that could be exploited by competitors to obtain an unfair competitive advantage.

During the development of its public CbCR, the EU acknowledged that "*the disclosure of turnover and purchases within a group poses a threat to multinationals in that it could divulge key information to competitors."*[2] As a result, the EU public CbCR does not require the disclosure of revenue from third parties, revenue from related parties and the book value of tangible assets.

The EU public CbCR also does not require the disclosure of the approach to tax or reasons for variances between the amount of income tax accrued and a reference tax amount obtained using a simplified ETR formula. In our view, this outcome is appropriate as such disclosure would also provide valuable information to competitors, including those who might not be subject to Australian reporting obligations.

In addition, we question the benefit to the public since the approach to tax and reasons disclosed require a high degree of expertise and technical knowledge to be understood and could easily be misinterpreted.

We note that GRI 207-1 (approach to tax), on which paragraph 3DA(1)(c) of the exposure draft is based, is immature as a concept. The qualitative disclosures under this requirement introduce a subjective element to CbC reporting, which defeats the intent of prioritising objective and measurable information.

In our view, the application of GRI 207-4 (reasons for differences between simplified ETR and current tax), on which paragraph 3DA(3)(j) of the exposure draft is based, is also inappropriate. Taking the life insurance industry as an example, very specific and unique local tax rules and complex accounting concepts, such as the impact of deferred taxes on a very long-term business model, would likely form part of any explanation provided. Without adequate expertise and technical knowledge, there is a real risk that incorrect conclusions are drawn by the public.

Our proposed solution

1. Transparent and verifiable criteria that take into account the latest internationally agreed tax good governance standards should be developed to determine which jurisdictions should be categorised as a "specified jurisdiction". The adoption of BEPS Pillar Two rules should constitute one of the primary considerations relevant for this determination.

2. Bermuda, Hong Kong and Singapore should be removed from the list of specified jurisdictions effective from 1 July 2024 as a result of their adherence to the latest internationally agreed standards in relation to tax good governance, including BEPS Pillar Two.

3. The requirements to disclose data on revenue from third parties, revenue from related parties that are not tax residents of the jurisdiction, the book value of tangible assets (other than cash), and the CbC reporting group's approach to tax should be removed. The disclosure of reasons for any difference between the amount of income tax accrued and the tax amount obtained using a simplified ETR formula should also be withdrawn. The drafting of the legislation should follow the language and intent of the legislative drafting of the EU reporting directive, instead of GRI 207, to mitigate the risk of commercial prejudice.

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[2] See https://ec.europa.eu/commission/presscorner/detail/fr/MEMO_16_1351

We would welcome the opportunity for further discussions and consultation on the exposure draft, and can provide insight and input from our global counterparts within the AIA Group. For any discussions, please contact in the first instance Sarah Phillips, GM Communications and Corporate Affairs, sarah.phillips@aia.com, 0498 494 791.

Yours sincerely

Damien Mu
CEO and Managing Director
AIA Australia

Appendix I

GFTEI
Country Monitoring – Bermuda, Hong Kong and Singapore Overview[3]

	Bermuda	Hong Kong	Singapore
Exchange of information on request (EOIR)			
Global Forum membership	yes	yes	yes
EOIR rating round 1	largely compliant	largely compliant	largely compliant
EOIR rating round 2	largely compliant	largely compliant	compliant
Mutual Administrative Assistance Convention	in force	in force	in force
Automatic exchange of information (AEOI)			
Commitment to AEOI (CRS)	2017	2018	2018
CRS MCAA signed	yes	yes	yes
Review of the AEOI legal frameworks	in place	in place	in place
Initial review of effectiveness in practice of AEOI	on track	on track	on track
Mutual Administrative Assistance Convention	in force	in force	in force
BEPS			
Inclusive Framework on BEPS membership	yes	yes	yes
Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (11 July 2023)	participates in agreement	participates in agreement	participates in agreement
Existence of harmful tax regimes (Action 5)	not harmful (no or only nominal tax jurisdiction)	not harmful (no harmful regime exists)	not harmful (no harmful regime exists)
Exchange of information on tax rulings (Action 5)	no review (no tax jurisdiction)	reviewed/no recommendations	reviewed/no recommendations
Preventing treaty abuse (Action 6)	2022 review completed	2022 review completed	2022 review completed
CbC – Domestic law (Action 13)	legal framework in place	legal framework in place	legal framework in place
CbC – Information exchange network (Action 13)	activated	activated	activated
Effective dispute resolution (Action 14)	stage 2 reviewed & recommendations made	stage 2 reviewed & recommendations made	stage 2 reviewed & recommendations made
Multilateral Instrument (Action 15)	-	in force	in force

[3] See https://www.oecd.org/tax/transparency/country-monitoring/