Asia Internet Coalition (AIC) Comments: Australia's Treasury Laws Amendment Bill 2024: Multinational Tax Transparency – Country by Country Reporting

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8 March 2024

To The Treasury
The Government of Australia

On behalf of the Asia Internet Coalition (AIC) and its members, I am writing to express our sincere gratitude to the Treasury, Government of Australia for the opportunity to submit comments on the Australia's Treasury Laws Amendment Bill 2024: Multinational Tax Transparency – Country by Country Reporting. AIC is an industry association of leading internet and technology companies in the Asia Pacific region with a mission to promote the understanding and resolution of Internet and ICT policy issues in the Asia region.

We welcome the opportunity to provide comments on the Government's proposed public country-by-country (CbC) legislation. We acknowledge the Government's desire to enhance tax transparency and for businesses to provide relevant and helpful information about their activities to investors and the public. We hope that in doing so, the Government also considers the significant compliance burden placed on businesses especially when the legislation is inconsistent with international standards and norms, and that the Government can proportionately undertake greater responsibilities to safeguard the appropriate use of CbC information and ensure that the information is interpreted consistently by all relevant stakeholders.

In this regard, we are grateful to be able to present our **comments and recommendations in Appendix A** of this paper and would also like to re-state our continuous support and assistance to the Australian government. We welcome the changes already made following the previous public consultation but would encourage the Government to consider further improvements. As such, please find appended to this letter detailed comments and recommendations, which we would like to respectfully request the Treasury to consider. Please also refer to AIC's earlier submission sent on 28 April 2023.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact me directly at Secretariat@aicasia.org or +65 8739 1490. Thank you for your time and consideration. Importantly, we would also be happy to offer our inputs and insights on industry best practices directly through meetings and discussions to help shape the dialogue for an effective tax framework in Australia.

Sincerely,

Jeff Paine
Managing Director
Asia Internet Coalition (AIC)

Appendix A: Detailed comments and recommendations

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1. **Extensive requirements and inconsistency with international standards create confusion and significant compliance burden for MNEs:**

    a. While we welcome the changes made following the previous public consultation, Australia's latest proposal continues to be extensive, unprecedented globally and inconsistent with current international CbC disclosure standards. We encourage the Government to consider further alignment.
        - The proposal to make additional information, namely (i) the MNE's approach to tax; (ii) revenue (split between unrelated and cross-border related); (iii) book value of tangible assets; and (iv) income tax reconciliation, mandatory for public disclosure on a CbC basis is inconsistent with current international standards, therefore creating a significant compliance burden for in-scope MNEs that is in addition to their existing global CbC obligations. These MNEs would need to source additional data, carry out internal reconciliations/analysis and secure assurance on the information specifically to comply with the proposed Australian CbC legislation.
        - For instance, under the draft Australian legislation, revenue is required to be split between related and unrelated parties whereas under the EU public CbC regime, only total revenue is required to be disclosed. In addition, under the draft Australian legislation, for related party revenue, only cross-border amounts are required to be disclosed whereas domestic amounts are excluded for reporting. Compared to having a globally consistent standard, the different requirements for revenue disclosure in Australia will create confusion for the general public and stakeholders, as well as impose

a significant compliance burden on MNEs to track, reconcile and implement.

- As for income tax reconciliations, they are usually technical in nature and may not be easily understood by the general public without the right knowledge (e.g. understanding of domestic tax laws and accounting principles) and context. Such disclosures are prone to misinterpretation and do not lead to meaningful transparency and discourse.

b. To reduce the compliance burden and achieve consistency with data reported under the EU's CbCR directive, we recommend that in determining the "approved form" in which data will have to be reported, the Australian government consider the work being undertaken within the EU to develop a common EU template which would need to be submitted using iXBRL software. Free text should be available to provide context without limits.

c. We acknowledge the Government's proposed authority to enact regulations prescribing additional information for publication. We welcome the intention to consult on any additions. We also encourage the Government to allow ample time for the currently proposed requirements to stabilise before contemplating the inclusion of further information.

2. **List of specified jurisdictions for disaggregated reporting lacks transparency, robustness and objectivity:**

a. The proposal requires CbC reporting for a list of 41 specified jurisdictions as determined by the Minister. The list will result in CbC disclosures that are broader than the EU public CbC reporting regime. Once again, the deviation from global CbC standards creates significant compliance challenges for in-scope MNEs.

b. More importantly, the list does not appear to be determined based on **transparent** and objective criteria coupled with a robust process in engaging with identified jurisdictions, unlike the case of the EU list of non-cooperative jurisdictions in which the EU public CbC reporting regime is based on. Note that the EU list is determined against a set of transparent screening criteria (namely tax transparency, fair taxation and implementation of OECD BEPS measures), assessed by a Code of Conduct Group comprising high-level representatives of the Member States and the European Commission in consultation with identified jurisdictions, and eventually approved by the EU General Affairs Council. Without similar rigour and robustness in the determination process, the Australian list of 41 specified jurisdictions appears to be arbitrary, excessive, and disproportionate to achieving the policy intent of greater transparency.

3. **Safeguards on the appropriate use and interpretation of CbC information needed:**

a. We strongly believe that CbC reports should be exchanged confidentially between governments and the use of information contained within these reports be safeguarded via international tax treaties. Without the right context, the information therein could be easily misunderstood or misrepresented by the general public or bad actors. Such potential outcomes do not add to the meaningful transparency and discourse.
b. Nonetheless, if Australia decides to proceed with public CbC reporting, we urge the government to **include in legislation the need to establish clear and necessary safeguards on the appropriate use and interpretation in the draft legislation**. For instance, the ATO's role should not just be limited to facilitating the publication of the CbC reports (as intended under the current Exposure Draft). The ATO should work with relevant stakeholders to design and publish detailed accompanying guidance that would help the general public and other relevant stakeholders (i) use the CbC reports appropriately; and (ii) properly contextualize the information in a CbC report so that all parties can apply a **common language** when it comes to interpreting the information.
c. We wish to highlight that unlike the case of the ATO Tax Transparency Code which is voluntary, the current draft legislation makes public CbC reporting mandatory for in-scope MNEs and thereby creating a significant compliance burden on these MNEs. It therefore warrants that the Australian government undertakes proportionately greater responsibilities in safeguarding against inappropriate use and misinterpretation of the CbC information beyond merely facilitating the publication of the CbC reports.

4. **Insufficient lead time for consultations and implementation:**

a. While in-scope MNEs are used to preparing CbC reports under the OECD BEPS Action 13, given that Australia's proposed regime extends significantly beyond current international standards, the Australian government should provide for a more robust consultation process which should include a sufficiently long consultation period of at least two months. This is especially so when the government is concurrently consulting on other major tax proposals such as the software royalty draft ruling which could impact similar MNEs.
b. As there will be a need for ATO to issue implementing guidance (especially to safeguard appropriate use and interpretation) after the law is passed, instead of an effective date of 1 July 2024, the Australian government should provide for a sufficient lead time of at least 12 months from the issuance of implementing guidance and readiness of ATO reporting systems to enable impacted businesses to prepare for implementation e.g. update internal processes and systems, communicate with internal and external stakeholders.