

5 March 2024

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

Revised Exposure Draft Consultation – Public Country-by-Country Reporting

Dear Sir/Madam,

On behalf of the members of Asia Securities Industry & Financial Markets Association (“**ASIFMA**”)¹ and the Capital Markets Tax Committee of Asia (“**CMTC**”)², we respectfully submit this discussion paper to present our views regarding the public consultation released on 12 February 2024 on the revised Exposure Draft (“**ED**”) law for the proposed Australian public country-by-country reporting measures (“**PcCR**”). We thank you for the opportunity to share comments on this matter.

We recognise that the Australian Government, as part of the 2022–23 Federal Budget, announced a transparency measure for certain large multinational entities (“**MNEs**”) to prepare for public release certain tax information on a country-by-country basis and a statement on their approach to taxation.

Under the ED:

- In-scope MNEs are required to publish general information including the group’s approach to tax.
- For Australia and each specified jurisdiction that the MNE operates in, it must publish, at a group level, certain information.

¹ ASIFMA is an independent, regional trade association comprising a diverse range of over 165 leading financial institutions from both the buy and sell side, including banks, asset managers, professional services firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, competitive and efficient Asian capital markets that are necessary to support the region’s economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the US and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

² CMTC is a financial services industry body consisting of a number of banks, investment banks, securities firms and other diversified financial services institutions operating in Asia who are represented through their regional tax directors. The main objects of the CMTC, according to its Constitution, are “to provide a forum for discussion by corporate tax managers responsible for the tax affairs of investment banks, securities firms, banks and other diversified financial services institutions of topical taxation issues in Asia affecting their capital and securities markets and similar activities; ... to keep members informed of up to date information on taxation matters affecting capital and securities markets, and to exchange views on the technical analysis thereof; [and] to represent the interests of its members through acting as the respected voice of investment banks, securities firms, banks and other diversified financial services institutions, and to participate in liaison or advocacy activities on tax matters either directly or indirectly through representation with other groups or societies concerned with or by fiscal matters.”

- For non-specified jurisdictions, the MNE has the choice of publishing the same information for all jurisdictions or alternatively publishing slightly reduced information on an aggregated basis for all non-specified jurisdictions.

A draft instrument proposes an initial list of 41 specified jurisdictions, including Hong Kong and Singapore, which the exposure draft explanatory material states were selected on the basis that they are typically associated with tax incentives, tax secrecy and other matters likely to facilitate profit shifting activities.

As many of our members are global financial institutions headquartered outside Australia with a presence in Australia, Hong Kong and Singapore, we are greatly interested in providing input to the Australian Government on PCbCR in a way that aligns with the policy intent of improving tax transparency. It is against this backdrop that we submit our recommendations on the revised ED included in this discussion paper.

Thank you again for the opportunity to provide our comments on the ED. If you have any questions or wish to discuss these matters in further detail, please contact Patrick Pang, ASIFMA Head of Compliance and Tax (PPang@asifma.org), and Edward Lean, the CMTC Chairperson (Edward.Lean@aia.com).

Respectfully submitted for and on behalf of Asia Securities Industry & Financial Markets Association and the Capital Markets Tax Committee of Asia



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We would like to express our general support for the Australian Financial Markets Association (“**AFMA**”) submission paper. ASIFMA is also a joint signatory to a funds industry coalition letter on Public Country-by-Country Reporting.

In addition, we specifically request the removal of Hong Kong and Singapore from the draft list of specified jurisdictions entitled *Taxation Administration (Country by Country Reporting Jurisdictions) Determination 2024* (“**Determination**”) so as to appropriately reflect and give effect to the policy intent of improving tax transparency. Our reasons for this request are set out below.

1. *Committed to international best practice*

Hong Kong and Singapore are both members of the Global Forum on Transparency and Exchange of Information for Tax Purposes³ (“**GFTEI**”). Hosted by the OECD’s Centre for Tax Policy and Administration, the GFTEI is an international body working on the implementation of the international tax transparency standards. It ensures that these high standards are in place around the world through its monitoring, peer reviewing and capacity-building activities.

Both jurisdictions are committed to upholding international tax transparency measures as evident from having signed, ratified, and enacted into law, 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; and
- The Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information.

Please refer to Appendix I for GFTEI’s overview of where Hong Kong and Singapore stand in terms transparency and exchange of information for tax purposes, based on its monitoring and peer review work.

2. *Good faith international actors co-operating in combatting cross-border tax avoidance and profit shifting*

Hong Kong and Singapore are members of the OECD Inclusive Framework that have signed and ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**MLI**”). Moreover, both jurisdictions have committed to implementing OECD BEPS Pillar 2 (“**BEPS P2**”) with effect from 2025 to address remaining issues identified by the OECD/G20 BEPS Project.

3. *International financial centres with economic substance requirements in line with international tax standards*

³ <https://www.oecd.org/tax/transparency/>

In line with BEPS Action 5 Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report (“**BEPS Action 5**”), 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 European Union (“**EU**”). Moreover, also 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.

4. *Recent amendments to domestic tax legislation*

Following enhancements to its legislation, Hong Kong has recently been removed from the EU watchlist on tax co-operation – a move that signals the EU’s acknowledgment of Hong Kong’s commitment to promote and strengthen tax good governance mechanisms, fair taxation and global tax transparency in order to tackle tax fraud, evasion and avoidance.

Similar to Hong Kong, Singapore has also 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 a result of these steps, both Hong Kong and Singapore have been classified as cooperating with the EU, with no pending commitments⁴.

5. *Tax transparency*

As noted above, the stated intent of PCbCR is to provide greater transparency on how MNEs structure their affairs in certain jurisdictions associated with tax incentives, tax secrecy and profit shifting activities.

Hong Kong and Singapore have demonstrated their commitment as responsible international actors acting in good faith to adhere to current international tax norms by upholding tax transparency and taking reasonable steps to counteract base erosion and profit shifting. There are no signs of bad faith nor evidence of legal and administrative red tape that prevents the Australian Taxation Office (“**ATO**”) from obtaining tax related information from Hong Kong or Singapore. The inclusion of Hong Kong and Singapore in the Determination is damaging to their reputation as international financial centres and is concerning to our members who operate in those jurisdictions.

Details of international transactions are routinely shared by MNEs with the ATO via existing reporting mechanisms (e.g. International Dealings Schedule, existing Country-by-Country reports, etc.). Moreover, Singapore and Australia have an existing tax treaty to facilitate exchange of information between Competent Authorities upon request, in addition to the disclosure and

⁴ <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/>

administrative cooperation obligations in the above-mentioned multilateral conventions and BEPS Action 5.

On this basis, it is unclear how the proposed requirement for in-scope MNEs to submit such information as required under PCbCR would be necessary to enhance tax transparency.

Lastly, the inclusion of Hong Kong and Singapore in the Determination may portray these jurisdictions negatively to the general public and potentially damage their respective reputations as investment locations. Considering the matters discussed above, we do not see a reason for their inclusion, on either practical or tax policy grounds.

Appendix I

Global Forum on Transparency and Exchange of Information for Tax Purposes
Country Monitoring – Hong Kong and Singapore Overview⁵

	Hong Kong	Singapore
Exchange of information on request (EOIR)		
Global Forum membership	yes	yes
EOIR rating round 1	largely compliant	largely compliant
EOIR rating round 2	largely compliant	compliant
Mutual Administrative Assistance Convention	in force	in force
Automatic exchange of information (AEOI)		
Commitment to AEOI (CRS)	2018	2018
CRS MCAA signed	yes	yes
Review of the AEOI legal frameworks	in place	in place
Initial review of effectiveness in practice of AEOI	on track	on track
Mutual Administrative Assistance Convention	in force	in force
BEPS		
Inclusive Framework on BEPS membership	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
Existence of harmful tax regimes (Action 5)	not harmful (no harmful regime exists)	not harmful (no harmful regime exists)
Exchange of information on tax rulings (Action 5)	reviewed/no recommendations	reviewed/no recommendations
Preventing treaty abuse (Action 6)	2022 review completed	2022 review completed
CbC – Domestic law (Action 13)	legal framework in place	legal framework in place
CbC – Information exchange network (Action 13)	activated	activated
Effective dispute resolution (Action 14)	stage 2 reviewed & recommendations made	stage 2 reviewed & recommendations made
Multilateral Instrument (Action 15)	in force	in force

⁵ <https://www.oecd.org/tax/transparency/country-monitoring/>