



11 March 2024

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

Email: MNETaxTransparency@treasury.gov.au

Dear Sir/Madam,

Public Country by Country Reporting – February 2024

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to comment on the updated, proposed public country by country reporting proposals published by Treasury on 12 February 2024: refer Exposure Draft (ED) and accompanying material to the Treasury Laws Amendment Bill 2024: Multinational tax transparency – Country by country reporting. The ED seeks to amend the Taxation Administration Act 1953 (TAA) by inserting new sections 3D, 3DA and 3DB.

CA ANZ represents more than 136,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live. Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

Changes to earlier draft

CA ANZ supports well-designed tax transparency rules which are consistent with the global tax transparency rules.

CA ANZ lodged a submission dated 4 May 2023 on the previous draft and it is pleasing to see that the revised ED contains a range of suggested improvements. These include:

- Removing the requirement to disclose certain items which are not currently required to be disclosed under current global public country by country (CBC) standards such as the ER Directive on public CBC reporting and GRI 207.
- Including a de minimis rule - a foreign headquartered multinational group with only a minimal presence in Australia should not have to be caught within the public CBC reporting regime.
- Deferring the application date for the new rules to a reporting period that starts on or after 1 July 2024.
- Removing the requirement to publish the effective tax rate based on Pillar Two rules.

Comments on the revised ED and explanatory materials

We have set out our comments on the revised ED and explanatory materials in the attached Appendix. Broadly, our issues include:


- With the delay in releasing the revised ED for consultation, our members are concerned with the implementation timetable and CA ANZ recommends a *staged* implementation of the public CBC reporting requirements.
- Clarification of treatment of Australian Significant Global Entities (SGEs) with no foreign operations is needed.
- CA ANZ is concerned about the inclusion of jurisdictions, which are not in the EU non-cooperative and grey list of jurisdictions, in the list of reporting jurisdictions for Australian public CBC reporting.
- Updating the list of jurisdictions.
- Priority issues that need guidance from the Australian Taxation Office (ATO).
- The role of the Board of Taxation's Voluntary Tax Transparency Code and register.

CA ANZ contact

Should you wish to discuss this submission, please contact in the first instance Karen Liew at:

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Yours faithfully,



Michael Croker
Tax Leader - Australia

APPENDIX

Comments on the revised ED and explanatory materials

Commencement date – Staged implementation

The Government's decision to defer the start date until income years commencing on or after 1 July 2024 was particularly welcome. This timeline is now broadly in line with the EU public CBC reporting directive (EU Directive 2021/2101).

Nonetheless, the delay in drafting the revised ED means that concerns remain within the business community and the accounting profession about the comprehensive nature of Australia's proposed regime and implementation timeframes.

CA ANZ remains of the view that a transitional, staged implementation should be adopted:

- Despite the introduction of a \$10 million Australian-sourced aggregated turnover de minimis rule (a low figure); and
- Because some entities may not have to report obligations anywhere but in Australia.

To this end, the legislation should provide the Commissioner with an express power to notify impacted entities at the lower end of the aggregated turnover spectrum that they have a deferred start date. At the very least, there should be a power for the Commissioner to grant additional time to publish data.

This power should also be available where for example, a domestic entity is acquired by a foreign company and additional time is needed to implement the various systems required to report.

From an administrative viewpoint, such a power would also seem be preferable to the ATO dealing with requests for penalty remission from those who will miss the publication deadline.

Clarification of treatment of Australian SGEs with no foreign operations

The legislation should either:

- Exclude Australian SGEs with no foreign operations from the reporting requirements; (this should not be left to legislative instrument under subsection 3DB(4) of the TAA); or
- Explain in the Explanatory Memorandum the rationale for the inclusion of these entities.

Reporting jurisdictions

The draft Taxation Administration (Country by Country Reporting Jurisdictions) Determination 2024 specifies the jurisdictions for which the CBC reporting parent must publish selected tax information on a CBC basis if the CBC reporting group operates in that jurisdiction.

Although the identified jurisdictions align with the ATO International Dealings Schedule's specified countries or jurisdictions list, some jurisdictions have been included despite now being fully compliant with the OECD transparency and exchange of information obligations. CA ANZ assumes this is due to their relatively low corporate tax rates and other incentives which attract inbound investment to those countries.

The Explanatory Materials to be presented to Parliament should explain why countries such as Switzerland, Hong Kong and Singapore have been included as these jurisdictions are not on the EU non-cooperative list or grey list.

Updating the list of reporting jurisdictions

Legislative lists of jurisdictions specifically named in tax legislation have not been updated regularly. Furthermore, the ATO's International Dealings Schedule country listing has not been updated.

This is of particular concern given that countries around the world are currently responding to the impact of the BEPs project on their domestic tax regimes including the introduction of a domestic minimum tax of 15 per cent.

Accordingly, a legislative requirement should be inserted into the law to annually update the list of reporting jurisdictions.

CA ANZ also recommends that the list of reporting jurisdictions be aligned with the EU non-cooperative and grey list of jurisdictions.

Ability to add to reporting requirements

The latest draft no longer requires disclosures of the related party expenses, effective tax rates, lists of tangible assets, and lists of intangible assets and their book values. CA ANZ welcomes this change.

CA ANZ notes however that the amendments include a power to make regulations to prescribe further information to be set out in the public CBC report. This might include any future updates to the GRI 207 disclosures. The explanatory materials also note that interaction of these measures with future measures, such as Pillar Two reforms to implement the global minimum tax and domestic minimum tax in Australia, will be considered as part of the implementation which may result in additional information being published.

It will be important for the Treasurer to be mindful of the compliance costs of adding to reporting requirements and allow for sufficient implementation time. Ideally, the enabling legislation should include requirements for adequate start times for any future regulations.

Public advice and guidance

The Public CBC reporting Treasury consultation webpage seeks external feedback on aspects of the proposed law which would benefit from ATO public advice and guidance (PAG).

CA ANZ suggests the following:

1. "Approach to tax"

Given the potential scrutiny arising from CbC reporting it would be helpful for impacted entities and tax and potentially other regulators to develop a shared understanding of what is meant by the group's "approach to tax" and the tax risk management framework underpinning this public statement.

2. Compatibility with other reporting obligations

For reasons which are unclear to CA ANZ, the draft law reflects some discrepancies in wording between the data listed in draft subsections 3DA(1) and (3) and those in GRI 207-1 or GRI 207-4. In the absence of alignment, guidance will be required from the ATO. In developing such guidance, the goal should be to align definitions and basis of calculations to reduce confusion for users and the administrative burden on impacted entities.

Furthermore, in relation to interpretation, subsection 3DA(7) refers to the OECD guidance and GRI 207 disclosures. We have received member feedback that given the guidance on interpretation have been written from an overseas context, there may be further clarification needed to translate some information for purposes of public CBC reporting in the Australian context.

For example, the definition of “employee” under *GRI 207: Tax 2019* is “individual who is in an employment relationship with the organization according to national law or practice”. Reporting entities would need guidance on what is “national law and practice for the purposes of interpreting “employee”.

It would be useful to have a free text box in the ATO’s approved form that would allow reporting entities to clarify any amounts.

3. Context, narrative and cross linking

ATO communications about the public CBC reporting requirements should be a consultation topic with the ATO. This is because the context of CBC reporting will be important for *both* reporting entities and the ATO. Just as the ATO has done with [existing transparency disclosure requirements](#), it will be useful for the ATO and stakeholders to discuss the narrative that should accompany the new publication. CA ANZ expects that some impacted entities may wish to link readers to more detailed information published on the entity’s website and would seek ATO co-operation to publish such links.

4. What constitutes a material error?

The ED caters for the situation where a CBC reporting parent becomes aware of a “material error” contained in the information published and allows 28 days for the corrected information to be provided to the Commissioner of Taxation for publication. If a CBC reporting parent becomes aware of a non-material error, it may correct the error in the same way but is not obliged to do so. It is not clear what constitutes a ‘material error’ in subsection 3DB(1).

In addition, the 28-day requirement for correcting a material error may be from a practical perspective too short. An error may be detected by a CBC reporting parent but it may take some time to quantify the correct disclosure and then obtain internal permission to issue the disclosure to the ATO. This is particularly the case when dealing with foreign subsidiaries.

5. Exemptions

There is little guidance in the ED or the EM as to when an exemption will be granted. The EM should provide further guidance on the application the exemption provisions. The ATO will also need to provide guidance on how and when to apply for an exemption as the information required may be considered confidential and commercially sensitive by taxpayers.

6. Tax technology aspects of reporting

A fundamental requirement of [EU Directive 2021/2101](#) is that the published data be comparable and: “to that end, implementing powers should be conferred on the Commission to lay down a common template and electronic reporting formats, which should be machine-readable”.

The systems and processes for collating, reviewing and approving the relevant data should not be taken for granted by tax regulators, particularly given the overlapping CBC tax reporting requirements of other CBC reporting regimes, such as:

- OECD CBC reporting (Action 13 of the OECD’s base erosion and profit shifting project);
- EU Directive 2021/2101;
- Global Reporting Initiative’s Sustainability Reporting Standards *GRI 207:Tax (2019)*;
- Qualifying CBC report in accordance with the Pillar Two/Global Anti-Base Erosion rules; and
- Voluntary Tax Transparency Code (VTTC), including whether the VTTC is an appropriate supplement to required public CBC reporting.

CAANZ notes that large entities have complex, diverse financial reporting systems. Electronic CBC reporting may require adaption of such systems.

No doubt the ATO has already turned its mind to the online and tax technology aspects of the proposed measure and this should be part of the consultation process.

Board of Taxation – VTTC – Post implementation review

Representatives of CAANZ attended the 9 February 2024 meeting of stakeholders with the Board of Taxation to discuss a range of tax transparency topics, including the interaction of the different regimes, for example CBC reporting requirements, Global Reporting Initiative and the VTTC. Treasury’s exposure draft legislation and explanatory materials for the public CBC reporting measure were released shortly after this meeting.

It is unclear to CAANZ whether (and if so, how) Treasury and the Board of Taxation are working together on tax transparency initiatives.

For example:

- Does the Board of Taxation have a role in developing recommendations to streamline current and proposed reporting obligations?
- What does the future hold for the Board’s [Tax Transparency Code and Register](#)?

At the very least, CAANZ hopes that the Board’s interest in this topic translates into a post-implementation review of current and proposed transparency initiatives, and it would be good if such a project enjoyed the imprimatur of the Treasurer.