

**Written Submission to
Exposure Draft (19/12/2023)
Treasury Laws Amendment Bill 2024:
Multinational tax transparency –
country by country reporting
read together with
Exposure Draft Explanatory Materials**

**Submitter: CapitaLand Investment Limited
(Incorporated in the Republic of Singapore)**

Date of Submission: 4 March 2024

Introduction

CapitaLand Investment Limited (the “Company”) is incorporated in the Republic of Singapore and its shares are listed on the Singapore Stock Exchange.

The principal activities of the Company are those relating to investment holding and provision of consultancy services as well as being the corporate headquarters which gives direction, provides management support services and integrates the activities of its subsidiaries. The principal activities of the significant entities included in the Company’s consolidated financial statements are investment advisory and management, lodging management, property management, and investment holding including investment in real estate assets and related financial products.

CapitaLand Investment Limited and its subsidiaries are subject to Country-by-Country (“CbC”) reporting in the Republic of Singapore and the group has Australian constituent entities for purpose of CbC reporting.

We respectfully provide our comments to the Exposure Draft (19/12/2023) Treasury Laws Amendment Bill 2024: Multinational tax transparency – country by country reporting, Schedule 2, item 1, Section 3D of the Taxation Administration Act 1953 (“TAA”) as follows:

1. Schedule 2, item 1, Section 3D(3) of the TAA as extracted below:

Publication of information

- (3) An entity to which this section applies for a reporting period must, within 12 months after the end of the reporting period:
 - (a) publish the information set out in section 3DA(1), except to the extent the entity and the information are specified in an exemption under subsection 3DB(6); and
 - (b) do so by giving a document containing the information to the Commissioner in the approved form.

Comments:

- We respectfully request that a sample/template of the approved form be made available to MNE groups as soon as possible to facilitate MNE groups in organising their information and data collation that allows the completion of the approved form in an efficient manner.
- The preparation of CbC report is an extensive exercise within the MNE group and consumes significant resources of the MNE group. We respectfully request that the timeline for an MNE group to publish the information in an approved form as required under Schedule 2, item 1, Section 3D(3) be extended to within 18 months after the end of the income year for the first reporting, and within 15 months after the end of the income year for subsequent reporting, to allow the MNE group time post-filing of the OECD CbC report to customize existing CbC report with the requisite additional information in the approved format for which Australia CbC report is to be submitted as required by the proposed legislation.

2. Schedule 2, item 1, Sections 3DA(1)(d) and 3DA(4) of the TAA as extracted below:

(d) the matters listed in subsection (3) for the reporting period in respect of each of the following jurisdictions:

- (i) Australia;
- (ii) a jurisdiction specified in a determination under subsection (4), if the country by country reporting group operates in that jurisdiction;

(4) For the purposes of subparagraph (1)(d)(ii), the Minister may, by legislative instrument, make a determination specifying jurisdictions.

Comments:

- We note in the Explanatory materials and statement that specified jurisdictions determined by the minister for single jurisdiction disclosure may be those that are associated with tax incentives, tax secrecy and other matters likely to facilitate profit shifting activities. Requiring information to be published on a CBC basis for these jurisdictions would provide greater transparency of how CBC reporting groups structure their tax affairs in these jurisdictions.
- Singapore should not be regarded as a jurisdiction “associated with tax incentives, tax secrecy and other matters likely to facilitate profit shifting activities”. We appeal to the Treasury to consider removing Singapore from the Taxation Administration (Country by Country Reporting Jurisdictions) Determination 2024 list of specified jurisdictions on the following grounds:
 - i. Singapore is a tax jurisdiction that provides targeted tax incentives only to enterprises with substantive economic substance in Singapore to promote high value-added activities.
 - ii. Singapore has joined 140 jurisdictions in support of the BEPS2.0 initiatives to combat base erosion and profit shifting activities, which may necessitate the sharing of tax information of taxpayers (under certain circumstances) with certain government agencies under the OECD multilateral instrument.
- We are appreciative of the Treasury’s efforts to implement public CbCR to help inform the public debate on the tax affairs of large multinationals. We also note the requirement by the Treasury for selected jurisdictions to provide additional information to improve information flows to help the public, including investors, compare entity tax disclosures, and to better assess whether an entity’s economic presence in a jurisdiction aligns with the amount of tax they pay in that jurisdiction.
- However, from an investor’s/shareholder’s perspective, it is a concern that such unequal treatment of jurisdictions will result in unfair disadvantage to MNEs having more economic activities in these selected 41 jurisdictions (which are subject to single jurisdiction disclosure) compared to MNEs with more business focus outside of these 41 jurisdictions. This additional disclosure may result in a competitive disadvantage for such groups as commercial information beyond what others are providing have to be detailed in the public domain, to the detriment of shareholders/investors of these entities. We respectfully urge and appeal to the Treasury to review and reconsider extending the option to publish information on an aggregated basis under Schedule 2, item 1, Section 3DA(1)(e) of the TAA to MNC groups with operations in Section 3DA(1)(d)(ii) of the TAA.

3. Schedule 2, item 1, Section 3DA(3)(j) of the TAA as extracted below:

- (j) the reasons for the difference between:
 - (i) the amount mentioned in paragraph (i) of this subsection; and
 - (ii) the amount of income tax due if the income tax rate applicable in the jurisdiction were applied to the amount mentioned in paragraph (f) of this subsection;

Comments

- We note the above is an additional requirement over and above the normal CbCR filing requirement. In-scope MNCs would have to incur additional costs associated with gathering and providing documentation to support reasons for the difference.
- There may be various legitimate reasons why the accrued tax differs from the tax due which may not always have a straightforward explanation.
- The above additional information required could unnecessarily complicate the process and increase the burden on both the MNCs and the Australia Tax Administrator.
- We note that the above additional information is not required for the OECD CbCR, nor the EU's Public CbCR purposes and respectfully request the Treasury to consider removing this additional requirement taking into considerations that MNCs are navigating through challenging business environment due to geopolitical tensions, inflationary and interest rate pressure, increased global reporting compliance including the impending implementation of Pillar 2 global minimum effective tax rate measures.

4. Schedule 2, item 1, Section 3DA(6) of the TAA as extracted below:

- (6) The amounts published by the entity for the matters listed in paragraphs (3)(c) to (i) and subsection (5) must be based on:
 - (a) if paragraph (b) of this subsection does not apply—amounts as shown in the audited consolidated financial statements for the entity for the reporting period; or
 - (b) if audited consolidated financial statements for the entity for the reporting period have not been prepared—amounts that would be, on the assumptions that the entity were a listed company (within the meaning of section 26BC of the *Income Tax Assessment Act 1936*) and such statements were prepared, shown in those statements.

Comments

- Currently, the CbCR information (based on OECD recommendation) can be based on amounts as shown in the **local** financial statements for the entity.
- The requirement to use only amounts as shown in the audited consolidated financial statements for the entity would impose onerous compliance requirements for MNE groups as this would deviate from the existing CbCR filing rules and requirements.

- We respectfully request the Treasury to allow in-scope MNCs the choice to use local data (bottoms-up approach) e.g. local financial statements for the publication of information under Schedule 2, item 1, Sections 3DA(6) of the TAA.

5. Division 288-140 Schedule 1 Penalty for failing to publish information on time

288-140 Penalty for failing to publish information on time

- (1) You are liable to an administrative penalty if:
 - (a) you are required under subsection 3D(3) or paragraph 3DB(1)(a) to publish information by giving a document containing the information to the Commissioner in the *approved form by a particular day; and
 - (b) you do not publish the information by giving the document to the Commissioner in the approved form by that day.
- (2) The amount of the penalty is 500 penalty units for each period of 28 days or part of a period of 28 days:
 - (a) starting on the day mentioned in paragraph (1)(a); and
 - (b) ending when you publish the information by giving the document to the Commissioner in the approved form;up to a maximum of 2,500 penalty units.

Note: Division 298 contains machinery provisions for administrative penalties.

Comments:

- We respectfully request that MNE groups subject to the CbC reporting under Schedule 2, item 1, Section 3D of the TAA be provided transitional penalty relief and that penalty be waived in the initial 3 years of implementation if the error(s) and/or non-compliance e.g. late filing is a result of e.g. honest mistake or unforeseen technical issues where the MNE groups have taken reasonable measures to be compliant while navigating the complex rules and systems requirements needed to be compliant with various global reporting obligations.

We shall be grateful for the Treasury's kind consideration of our above comments.

If you have any questions in relation to the above, please do not hesitate to contact Melvin Song (email: melvin.song@capitaland.com) or Ng Lin Yee (email: ng.lin.yee@capitaland.com).