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Director
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Corporate and International Tax Division
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Dear Sir/Madam,

Public Country by Country Reporting

The CTA welcomes the opportunity to provide a submission on the Government's public country by country reporting initiative contained in the Exposure Draft (**ED**) and accompanying material to the *Treasury Laws Amendment Bill 2024: Multinational tax transparency – country by country reporting*.

Firstly, we would like to acknowledge the ED is a significant improvement to previous iterations of the draft public transparency law.

Secondly, we acknowledge that it is government policy to go beyond the EU public CBC reporting rules and that the ED seeks to balance providing the public with meaningful tax transparency information whilst seeking to minimise the cost of complying with the measure. We do however believe further simple, yet meaningful changes can be made to make the rules less onerous to implement without detracting from the government's overarching intent.

Thirdly, we strongly recommend that, when finalised, the law (along with the multitude of other tax transparency initiatives) should be subject to a post-implementation review.

As the CTA has noted on numerous occasions, we support the provision of publicly available data that enlightens and does not mislead the public as to the tax performance of significant global entities (SGEs). We welcome that many SGEs voluntarily provide data to the public via the publication of ESG reports, tax contribution reports and voluntary tax transparency reports.

Our overriding observation is the current proposal is a "bolt-on" to existing mandated public transparency releases such as the report on entity tax data, the proposed publication of tax residency status of subsidiaries and the public R&D register. The current initiative does not consider the usefulness of the other numerous data points currently provided to the public and improve on them.[1] In our view the measure, however it is passed in its final form, must be subject to a post-

[1] In our view the publication of this information is unnecessary for ATO compliance purposes, given SGEs are providing existing CBC reports as well as information in tax returns (such as the international dealings schedule) and via compliance interactions under the numerous ATO engagement strategies.

implementation review as part of a wider review of the current suite of tax transparency measures[2]. In this regard, the CTA would also like to acknowledge and express support for observations made in the Original Bill's Impact Analysis Schedule 2 that Treasury will monitor the operation of the rules after implementation to detect and address any unintended consequences that may arise, and to ensure the policies are operating as intended[3].

We have attached as an Appendix some detailed comments and recommendations on the following specific aspects of the ED:

1 The list of specified countries should not include Switzerland, Singapore or Hong Kong, and the specified list should be reviewed on a regular basis.

2 The data points and definitions in sections 3DA(1) and 3DA(3) where appropriate should be identical to those in current CBC reports rather than GRI 207 definitions.

3 Reports should be published no later than 15 months after the end of the relevant fiscal year to better align with potential Pillar Two filing requirements.

4 Section 3DA(7) should also reference Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report | READ online (oecd-ilibrary.org) for interpretational purposes.

5 The ATO should publish as soon as possible a legislative instrument under sec 3DB(4) to exempt:

a. SGEs with operations only in Australia from the reporting requirements
b. Australian headquartered SGE's with minor footprints (below $100,000) in foreign jurisdictions
c. SGEs in the defence industry.

6 The ATO should publish guidance as soon as possible on:

a. the approved form using the current CBC XLM schema design as the basis for any form design
b. the level of materiality for corrections under section 3DB.

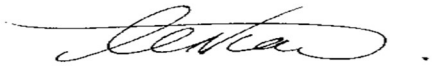
In addition, we welcome the inclusion of the 'Consultation preamble' on page 2 of the Explanatory Materials and consider that the parameters set out are a positive framework to guide Treasury in this consultation. We hope it will be a feature of future consultations on exposure drafts.

[2] The full tax transparency landscape in Australia is summarized in the CTA publication Tax-Transparency-Where-Australia-currently-stands-November-2023

[3] See Page 65 of Schedule 1 of parlinfo.aph.gov.au.docx (live.com) and the attached letter to Assistant Minister Leigh.

Should you have any questions in relation to the above, please do not hesitate to Paul Suppree at psuppree@corptax.com.au or on 0408 185 050.

Yours sincerely,



Michelle de Niese
Executive Director

Appendix – Detailed Comments on the Public CBC ED

The following provides some detailed observations and recommendations on the Exposure Draft (**ED**).

1 The list of specified countries should not include Switzerland, Singapore or Hong Kong and the specified list should be reviewed on a regular basis.

Whilst we acknowledge the government's intent to provide more disaggregated data of countries with jurisdictions that are considered low or no tax jurisdictions and/or have historically been secrecy jurisdictions, we have strong concerns that the current list of 41 specified countries has been developed from the wrong premise, by including Switzerland, Singapore and Hong Kong.

As is noted in the Explanatory Statement accompanying the ED, the list of specified countries in the draft determination has its genesis in the International Dealings Schedule (IDS) that was first implemented in 2012. The IDS was subsequently amended in 2016 to include Switzerland, Singapore, Hong Kong, Ireland, the Netherlands and Luxembourg, and hasn't been amended since. We understand the reason for the 2016 inclusions was part of ATO risk assessment processes, which at that stage was felt lacking as it did not include the detailed information contained in CBC reports which were only provided to the ATO from the 2017 year.[4]

From the 2017 year, taxpayers subject to the CBC reporting regime were required to list a significant proportion of related party data as the ATO was receiving that information from detailed CBC reports. The ATO did not amend the IDS for the list of specified countries, presumably to ensure it captured data for taxpayers that were not SGEs (and thus not subject to CBC reporting). It is worth noting that Switzerland, Hong Kong and Singapore all have CBC-compliant reporting regimes as do the EU countries that were included in the 2016 IDS amendments, and unlike the other 38 jurisdictions currently listed in the IDS would not be considered in the current climate to be tax havens. Moreover, the rationale for retaining Switzerland, Singapore and Hong Kong as disaggregated public CBC reporting regimes would equally apply to other jurisdictions that do not have public transparency regimes, such as the US, UK, China, Canada or New Zealand.

In our view, a better disaggregation model would be derived from countries that are currently listed as specified countries in the IDS but exclude those countries that currently have compliant CBC reporting regimes and have also indicated that they will be adopting the Pillar Two model rules and eliminated other non-compliant preferential tax regimes[5]. This would make the current specified list more contemporaneous with disclosure developments and international tax developments than a list with its genesis some 12 years ago before the commencement of the OECD BEPS agenda or developments in tax transparency over the last decade.

We note the need to ensure the list of prescribed jurisdictions is reviewed and updated regularly to reflect the evolution of the status of countries that are considered tax havens as recently happened with the EU which reduced the number of blacklisted countries from 16 to 12 earlier this month[6].

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[4] See Section A: International related party dealings | Australian Taxation Office (ato.gov.au)

[5] For example, for Switzerland this includes meeting exchange of information requirements, CBC reporting requirements, having compliant patent box regimes and eliminating all preferential tax regimes in 2019.

[6] EU rules require the black and grey lists to be reviewed every six months. See EU list of non-cooperative jurisdictions for tax purposes - Consilium (europa.eu)

2 The data points in sections 3DA(1) and 3DA(3) where appropriate should be identical to those in current CBC reports.

It would appear, despite being a mandatory transparency regime, the draft law tends to default to GRI 207 definitions, rather than mandatory CBC rule definitions. We submit the default position should be to adopt the current non-public CBC reporting definitions given they are well known by entities reporting in Australia and currently used to collect data points.

Whilst some of the data points in section 3DA(1) and (3) are identical to those in current CBC reporting or GRI 207-1 or GRI 207-4, there are also a number of data points that use slightly different terminology to either standard (and thus lack clear guidance at this stage):

a. Section 3DA(3)(e) asks for "Revenue from related parties that are not tax residents of the jurisdiction" whereas GRI 207-4 uses "Revenues from intra-group transactions with other tax jurisdictions" and CBC reporting uses "related and unrelated party revenues". Each has slightly different nuances and it is not clear what specifically the law is requiring or how the guidance in GRI 207 or the CBC reports differ (if at all). We suspect the intent of the draft law is to mirror GRI 207 definitions, but we suggest it makes more sense to match the definitions in CBC reports, given that data and systems already exist to collect this data, whereas GRI 207 is of course voluntary and creates additional data points without necessarily improving the utility to the public of the data provided.

b. Section 3DA(3)(c) which requires Full Time Equivalents (**FTE**) to be disclosed in year-end reporting needs to be amended so that existing CBC reporting definitions can be relied upon. Existing CBC reporting (and ATO guidance) allow the use of average FTE for the year, whereas GRI 207 uses either headcount or FTE.

c. Under GRI Disclosure 207-4-b-ii dealing with primary activity of an entity, the GRI narrative states:

"When reporting its primary activities in a tax jurisdiction, the organization can provide a general description such that a report reader can clearly identify the organization's main activities in the jurisdiction, for example, sales, marketing, manufacturing, or distribution. The organization is not required to list the activities of each entity in the jurisdiction."

By contrast, the 2015 CBC report uses a matrix-style listing of activities. We would recommend the matrix style of report is used given it is currently captured in mandatory CBC reports.

3 Reports should be published no later than 15 months after the end of the relevant fiscal year to better align with potential Pillar Two filings.

It is recommended that consistent with the Pillar Two Model Rules on the filing of the GloBE Information Return, that at the public CBC report is filed within 15 months of the end of the relevant financial year.

Pursuant to Article 8.1.6 of the Pillar Two Model Rules, the GloBE Information Return and the notifications pursuant to it are required to be filed with the tax administration no later than 15 months after the last day of the Reporting Fiscal Year. Article 9 of the Model Rules also provides transitional relief of 18 months for the first return.

Given further prescribed information can be sought under section 3DA(1)(f), which we suspect may include certain GloBE information return data such as effective tax rates, alignment of reporting periods will be more efficient for both taxpayers and the ATO.

4 **Section 3DA(7) should also reference Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report | READ online (oecd-ilibrary.org) for interpretation purposes**.

As noted above, there are slight nuances in the wording in the data points in the ED from that used in GRI 207 and CBC reports. Again, whilst we understand the government's desire to publicly disclose more information, it is not clear why the mandatory definitions in the OECD 2015 Final report of Action 13 are not used as the key anchor to interpretation. We would strongly recommend that definitions in the public CBC reporting proposal default to the current mandatory CBC reporting information definitions in the Final Action 13 report rather than the voluntary GRI 207-1 and 4 definitions. This will help minimise the cost of compliance without impacting the tenor of the government's public disclosure proposal.

5 The ATO should publish as soon as possible a legislative instrument under sec 3DB(4) which addresses the following:

- **a. SGEs with only Australian operations from the public reporting requirement**
- **b. Australian headquartered SGEs with minor footprints in foreign jurisdictions - a de-minimis rule should apply for such entities**
- **c. SGEs operating in the defence industry.**

(a) It almost goes without saying, but the ED is aimed at multinational tax transparency. However, as drafted, it is unclear whether an SGE with Australian-only operations would need to prepare a report for the purposes of the measure. It is submitted that Australian SGEs with no foreign operations are excluded from the measure, particularly as they are in practice excluded from non-public CBC reporting requirements via a yearly fast track exemption process.

We note article 1.2 of the CBC rules in Action 13 Report states:

The term "MNE Group" means any Group that (i) includes two or more enterprises the tax residence for which is in different jurisdictions or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, and (ii) is not an Excluded MNE Group.

(b) This seems to make it clear that CBC rules are intended to apply to groups with some offshore footprint. We submit similar a rationale exists for not requiring public CBC reporting for such groups.

We would also suggest to minimise compliance costs, a de-minimis rule is adopted for outbound groups with minor and insignificant activities in foreign jurisdictions similar to that adopted under the Extractive Industries Transparency Initiative. For example, the Canadian Extractive Sector Transparency Measures Act states that "amounts below $100k do not need to be disclosed".[7]

(c) SGEs operating in the defence industry carry unique confidentiality requirements given the strategic nature of their business to national defence. The provision of entity names and/or other financial information is sensitive and impacts national security and should be excluded from public disclosure.

6 The ATO should publish guidance as soon as possible on:

(a) the approved form of any report using the existing CBC reporting schema as the basis for any form design; and
(b) the level of materiality and timing for corrections under section 3DB

(a) The draft rules require taxpayers to give the required information in an approved form. It is recommended the ATO-approved form mirror insofar as possible the existing CBC report schema so as to minimise the cost of development of new processes for the collection of data by reporting entities.

(b) The draft rules do not provide any guidance on what is considered a material error to a published public CBC report requiring correction. For example, if a taxpayer adjusts a report for the number of employees or a revenue item, these may not significantly impact the utility of the existing data. Moreover, requiring notification of the error in a document within 28 days is an extremely short time frame to collate, prepare and inform the Commissioner, particularly as the information may be only known and available to a foreign -headquartered parent.

It is recommended:

(i) the materiality applied for mandatory notification of amendments to the Commissioner in draft section 3DB(1)(a) is set with reference to the global parent's financial accounts; and

(ii) draft section 3DB(2) is amended to require a taxpayer to provide the Commissioner with rectified information within 60 days, or such extra time as the Commissioner determines.

[7] See ESTMA Explained – AME (amebc.ca)