sifma

asset management group

03/05/2024

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

Re: Public Country-by-Country Reporting

Dear Sir/Madam

SIFMA's Asset Management Group (SIFMA AMG) brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms – both independent and broker-dealer affiliated – whose combined assets under management exceed $62 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

The international asset management industry strongly values the Australian capital markets. Market capitalization in Australia was almost $2 trillion in 2023, a four-fold increase since the turn of the century. Our members aspire to continue to be a part of that market growth and the employment and investment that it underpins. Financial Services account for 13 percent of all Foreign Direct Investment into Australia, above the share accounted for by manufacturing and second only to Real Estate. The United States alone accounts for around 40 percent of foreign equity investment into Australia.

Country-by-Country Reporting

SIFMA, on behalf of our AMG members, is engaged on Australia's Multinational Tax Integrity and Tax Transparency package. We were pleased to submit a letter on July 21st, 2023, focused on the key principles for proportionate and meaningful Public Country-by-Country Reporting (CbCR).

An inclusive process remains crucial at every key stage in designing and implementing such a regime. Thus, we commend the Australian authorities for continuing its efforts to promote more stakeholder input. We are now responding to the request for comments on the refinements proposed in the Exposure Draft consultation published on February 5th. We are benchmarking the proposals against the core principles we previously set out to evaluate '*whether the Exposure Draft legislation and explanatory materials appropriately reflect and give effect to the policy intent of improving tax transparency.*' Our primary concerns are with the divergence between the Australian Exposure Draft and the EU approach. If these are not addressed, the proposal risks negatively impacting the attractiveness of Australia to global financial institutions.

International consistency

As we set out in July, it is crucial that Australia adheres to international norms. This is especially true when other jurisdictions, particularly the EU, has designed its own approach to CbCR 'to combine openness on company accounts and the level of taxes actually paid with *the need to safeguard the competitiveness of EU businesses'*. To put these considerations in context, the World Economic Forum (WEF) puts Australia

19th in the 2023 World Competitiveness League Tables behind Belgium, Finland, and the Netherlands in Europe as well as Canada, Switzerland, and Singapore amongst others. The WEF ranks Australia 30th in terms of Business Efficiency.

We have two concerns. First with the nature of some of the information in scope and second with the 'top down' nature of the corporate information that is required to be shared.

(i) Scope of the Exposure Draft

Despite refinements, and the stated purpose of better aligning Australia with the EU, the Australian regime set out in the Exposure Draft is still not sufficiently aligned with international norms and, consequently, would expose highly confidential commercial data. The proposed CbCR regime has extensive cross-jurisdictional reach. It would require reporting the information of a non-Australian parent merely because the parent has established an Australian subsidiary. Although we do not object to reporting this information on a confidential basis, reporting publicly could compromise the competitive position of parent companies, which would disincentivize firms from doing business in Australia to the detriment of its economy, investors, and its own competitiveness.

It is critical for the Australian Government to understand that Multinational Enterprises (MNSs) can be fully compliant as taxpayers but still need to keep commercially sensitive information private. Desire to keep sensitive information private is not a reflection of the taxpaying status of an MNE – merely a desire to maintain commercial secrets from competitors.

To avoid harmful competitive impacts, Australia should consider building in protections for confidential data. A safeguard clause that would protect the competitive position of firms operating in Australia would also allow the regime to operate while having a neutral impact on Australia's international competitiveness – it would mean aligning Australia with other jurisdictions and remaining within the spirit of global tax transparency efforts by allowing commercially sensitive information to remain confidential. For example, the EU has 'comply or explain' provisions and other measures to protect commercially sensitive information. If the EU comply or explain standard isn't sufficiently stringent, Australia could offer a different confidentiality process whereby an entity could publicly report redacted information and supply the Australian government with an unredacted version and an explain why the redactions are necessary. This would allow for dialogue between the government and company and would ensure a review mechanism. Such an approach would be consistent with other transparency initiatives such as the GRI Sustainability Reporting Standards. Those standards permit firms to provide reasons for omitting disclosures and requirements that the organization cannot comply with. One key rationale recognized in the foundations of such standards are confidentiality constraints.

(ii) Top-down versus bottom-up approaches

The second divergence with the EU is that the Exposure Draft would require an MNE to source information from its consolidated financial statements (a top-down approach) rather than from its entity financial statements (a bottom-up approach). This is also inconsistent with data sourcing rules for other CbCR regimes, thereby adding considerable administrative duplication for no obvious policy gain.

Under the terms of the Exposure Draft, the covered entity must publish amounts as shown in the audited consolidated financial statements for the entity for the reporting period. By contrast, the EU allows the reporting MNE may choose to use data from its consolidation reporting packages, from separate entity statutory financial statements, regulatory financial statements, or internal management accounts.

It is not necessary to reconcile the revenue, profit, and tax reporting in the template to the Consolidated Financial Statements. If statutory financial statements are used as the basis for reporting, all amounts shall be translated to the stated functional currency of the reporting MNE at the average exchange rate for the year stated in the 'Additional information' section of the template. Adjustments need not be made, however, for differences in accounting principles applied from tax jurisdiction to tax jurisdiction.

Goal

Country-by-Country tax reporting is about tax transparency. The financial services industry is already a significant payer of tax revenue in Australia (see below). Rather than being the purpose of CbC tax reporting, it is the OECD's Pillar Two model rules that aim to address the tax challenges arising from digitalization and globalization by establishing a global minimum corporate tax rate set at 15 percent. Australia is one of the 137 signatories to this agreement. Moreover, the OECD has warned that, as previously proposed, Australia's CbC reporting would risk potentially 'undermining and weakening' efforts to tackle tax avoidance in certain parts of the global economy.

Approach to the financial sector

In terms of scope, the OECD has also highlighted the unique circumstances of financial services from the perspective of global taxation. Due to capital adequacy requirements, the Regulated Financial Services Exclusion provision omits the revenues and profits from Regulated Financial Institutions that reflect the risks taken on and borne by the firm. The OECD BEPS exclusion for Regulated Financial Institutions is relevant and should be applicable for Australia's CbCR regime, given the industry's reduced ability to engage in profit shifting and tax practices that the Australian government seeks to expose.

As signaled above, the financial services industry is already a significant payer of tax revenue in Australia; The Australian Banking Association estimated that banks and capital markets account for 60 percent of the tax paid by the ASX 200 industries. Many Multinational Enterprises (MNEs) domiciled outside of Australia already publicly disclose corporate tax paid in Australia.

Process

We welcome the continued consultative approach to CbC reporting in Australia. As the OECD has stated:

> '*Dialogue between governments and business is a critical aspect of ensuring that CbC reporting is implemented consistently across the globe. Consistent implementation will not only ensure a level playing field, but also provide certainty for taxpayers and improve the ability of tax administrations to use CbC reports in their risk assessment work'*.

Conclusion

SIFMA AMG are grateful for the opportunity to comment further on Australia's approach to CbCR. Given the transnational nature of the framework, ensuring that Australia's regime is proportionate and consistent with maintaining international competitiveness are significant factors that should be carefully considered before finalizing and moving forward with new rules. We would welcome the opportunity to liaise further with you, alongside our members with investments in Australia.

Sincerely,

LWKeljo

Lindsey W. Keljo
SIFMA – Head of Asset Management and Associate General Counsel