By Electronic Delivery to MNETaxTransparency@treasury.gov.au

March 4, 2024

Marty Robinson
First Assistant Secretary
Corporate and International Tax Division
Treasury
Langton Cres Parkes ACT 2600

RE: *Public Country-by-Country Reporting*

Dear Mr. Robinson,

The undersigned fund industry associations appreciate that the recently released proposal to require multinational tax transparency through public country-by-country (CbC) reporting addresses some of the concerns we raised last year.[1] It is important that the public have confidence that multinational entities (MNE) are paying their fair share of tax while balancing the business need to safeguard competitively sensitive commercial information and comply with the rules.

We have three specific recommendations to address these issues:

1) A "safety clause" provision to ensure that competitively sensitive commercial information remain confidential for as long as disclosure would be seriously prejudicial.
2) A "comply or explain" provision to address potential difficulties that will confront an Australian branch or subsidiary of a nonresident MNE parent.
3) A provision requiring objective criteria for inclusion on the specified jurisdictions for which CbC reporting is required.

We strongly support the disclosure of information that promotes sound investment decisions and tax compliance. The current proposal, however, does not balance appropriately the desire for greater transparency to potential investors and the public with the legitimate business need for certain competitive information to remain confidential. The proposed disclosures are likely to be voluminous for many businesses and may be incomprehensible to anyone except a business' competitors.

These recommendations will ensure that Australia remains an attractive market for doing business and investing capital. At a minimum, we strongly recommend that there be an extensive consultation period and extended implementation timeframe to mitigate these concerns. Moving

[1] *See* Fund Industry Coalition Letter on Public CbC Reporting to The Hon Dr Jim Chalmers MP, dated June 8, 2023.

forward with the proposal as drafted would weaken global cooperation, undermine tax certainty and stability, and run counter to Australia's stated position of welcoming foreign investment.[2]

Background

Australia's proposal would go far beyond what was agreed in Action 13 of the OECD's Base Erosion and Profit Shifting (BEPS) project. Specifically, Australia and other countries agreed that CbC reports would be shared solely with tax authorities. CbC reports were intended only to be a tool for risk assessment by tax administrations.

Australia's proposal also would go far beyond what was agreed by the European Union after extensive consultation. The EU directive is limited to information already reported on the CbC reports, addresses extraterritorial concerns, and includes safeguards to protect the confidentiality of commercially sensitive information.

Safeguard Clause

Australia's public CbC proposal should include a robust safeguard that will protect the competitive position of firms, especially privately held firms, that bring jobs to and invest capital in Australia. The EU recognized these competitiveness concerns and included a robust safeguard clause in its directive. Specifically, the EU allows commercially sensitive information, as determined by the relevant tax authorities, to be omitted from the public report. Imposing public disclosure of a company's commercially sensitive information would enable the firm's competitors to reverse engineer its financials, business strategy, and operation model; its competitors, in turn, would have an unfair competitive advantage in pricing their products and services.

We recognize that under the proposal the Commissioner may specify that any entity is exempt from publishing information of a particular kind through a written notice. We strongly recommend that this provision specify that it is intended to exempt commercially sensitive data (not applicable to specified jurisdictions). This provision should also direct the Commissioner to establish consistent eligibility criteria and an application process with no requirement to disclose data while a request is being considered. Absent a safeguard clause, MNEs operating in Australia would be at a significant disadvantage compared with their competitors that do not have an Australian presence and competitors that are not subject to broad public disclosures.

Comply or Explain

Australia's public CbC proposal should address potential difficulties that will confront an Australian branch or subsidiary of a nonresident MNE that is not willing or able to comply. We recommend that Australia adopt a "comply or explain" provision similar to the one in the EU directive; the EU provision requires an EU-resident subsidiary or branch of non-EU headquartered parent company to request the information required to comply with the public

[2] Source: https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/increase-foreign-investment-fees-and-penalties

country-by-country reporting directive. Specifically, an Australian entity should not be penalized if its nonresident MNE parent fails to comply with the public CbC reporting requirements. If the nonresident MNE parent does not comply, however, the Australian branch or subsidiary must publish a statement as to why some or all information is not available.

Country-by-Country Reporting Jurisdictions

The Australian proposal would require reporting on a country-by-country basis for specified jurisdictions. The jurisdictions are intended to be those that are typically associated with tax incentives, tax secrecy and other matters likely to facilitate profit shifting activities. The list, however, does not align with the EU's list of non-cooperative jurisdiction for tax jurisdictions. Most notably, the list includes Hong Kong, Singapore, and Switzerland. Consequently, the proposal would require reporting of detailed information that is not required to be disclosed publicly anywhere else in the world. We recommend that the proposal be modified to establish objective criteria for inclusion on the list based on equivalent metrics to those used to determine the EU list, and that a clear process of regular review be established to determine whether specified countries should continue to remain on the list.

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The undersigned industry associations support Australia's desire to provide the public, including investors, with increased transparency. We believe that incorporating the recommendations discussed above would promote that goal while balancing the needs for business to safeguard commercially sensitive information and foster tax certainty.

With kind regards on behalf of the undersigned fund industry associations,

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