

September 4, 2025

To: Simon Weiss, Law Interpretation Specialist, Office of the Chief Tax Counsel, Australian Taxation Office

Submitted electronically via PublicCBC@ato.gov.au

Re: PS LA 2025/D1 Public Country-by-Country Reporting Exemptions

To whom it may concern,

On behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition, this letter responds to the request for comments on the Australian Taxation Office's (ATO) draft law administration practice statement 2025/D1 (hereafter, the Practice Statement) pertaining to public country-by-country (CBC) reporting exemptions.¹ FACT welcomes the ATO's draft Practice Statement, which we believe reflects a measured approach to the application of public CBC reporting exemptions, consistent with the reporting regime's primary purpose of enhancing corporate tax transparency.

The FACT Coalition is a United States-based, non-partisan alliance of more than 100 state, national, and international organizations promoting policies to build a fair and transparent global financial system that limits abusive tax avoidance and curbs the harmful impacts of corrupt financial practices.² FACT is a leading voice for multinational tax integrity and has worked closely with policymakers, investors, standard-setting bodies, and international advocates to advance tax transparency measures globally. FACT has submitted numerous official comments on Australia's public CBC reporting regime, a selection of which are listed below:

- June 28, 2024: Comments on Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024³
- March 4, 2024: Comments on the Treasury's consultation on Public Country-by-Country Reporting – February 2024⁴

¹ Australian Taxation Office, "PS LA 2025/D1 Public country-by-country reporting exemptions," 2025, <https://www.ato.gov.au/law/view/document?DocID=DPS/PSD20251/NAT/ATO/00001&PiT=99991231235958>.

² A full list of FACT members is available at: Financial Accountability and Corporate Transparency (FACT) Coalition, "Coalition Members," 2023, <https://thefactcoalition.org/about-us/coalition-members-and-supporters>.

³ FACT Coalition, "Re: Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024 [Provisions] and Capital Works (Build to Rent Misuse Tax) Bill 2024 [Provisions]," June 28, 2024, https://thefactcoalition.org/wp-content/uploads/2024/06/FACT-Coalition-Submission-Re_-Treasury-Laws-Amendment-Responsible-Buy-Now-Pay-Later-and-Other-Measures-Bill-2024-1.pdf

⁴ FACT Coalition, "Re: Consultation on Draft Amendments Regarding Public Country-by-Country Reporting," March 4, 2024,

- July 21, 2023: Submission in response to the Senate Economics Legislation Committee’s inquiry into Treasury Laws Amendment (Making Multinationals Pay Their Fair Share-Integrity and Transparency) Bill 2023⁵
- April 28, 2023: Comments on the Treasury’s consultation on Draft Amendments Regarding Public Country-by-Country Reporting - April 2023⁶

Comments on the Practice Statement

FACT applauds the clear and consistent guidance provided to ATO officers to consider the law’s primary policy intent, mandatory language, and supporting context derived from parliamentary debate and public consultations when considering exemption requests for public CBC reporting.

Generally, the Practice Statement hews to the statutory language and intent of the law by:

- Requiring entities to request a reporting exemption from the Commissioner, rather than providing an elective or “exemption by self-assessment” option.
- Limiting exemptions to a single reporting period.
- Requiring entities to apply for an exemption before the reporting period in question ends.
- Giving the Commissioner the discretion to exempt an entity either from reporting entirely or from publishing information “of a particular kind” for a given reporting period, supporting “the policy intent that an entity should comply with the reporting requirements to the greatest extent possible.” (para. 20).
- Repeatedly recognizing that “The result of granting exemptions should not undermine the transparency and accountability aims of this disclosure regime...” (para. 29).
- Providing a reasonable definition of “exceptional circumstances” under which a practitioner may grant an exemption request.

When considering if “exceptional circumstances” merit an exemption, the years-long consultation process is a critical source of information on parliament’s intent in passing its CBC reporting law, and we agree that core features of the regime – such as including private groups in reporting requirements and not including a carveout for commercially sensitive information – imply that routine confidentiality concerns should not generally constitute grounds for an exemption.

<https://thefactcoalition.org/wp-content/uploads/2024/03/FACT-Coalition-Consultation-%E2%80%93-Public-Country-by-Country-Reporting-%E2%80%93-February-2024-1.pdf>

⁵ FACT Coalition, “Re: Treasury Laws Amendment (Making Multinationals Pay Their Fair Share-Integrity and Transparency) Bill 2023 [Provisions],” July 21, 2023,

https://thefactcoalition.org/wp-content/uploads/2023/08/FACT-Comment_-Treasury-Laws-Amendment-Making-Multinationals-6-Pay-Their-Fair-Share%E2%80%94Integrity-and-Transparency-Act-2023.-2.pdf

⁶ FACT Coalition, “Re: Consultation on Draft Amendments Regarding Public Country-by-Country Reporting,” April 28, 2023, https://thefactcoalition.org/wp-content/uploads/2023/04/FACT-Coalition_-AU-Public-Country-By-Country-Reporting-Comment.pdf.

We also agree that a number of factors should negatively impact the likelihood of a given exemption request being granted, including whether the information in question would be effectively disguised through aggregation, or whether the information is already in the public domain or can otherwise be readily obtained by the public.

Specific “Exceptional Circumstances”

Where the Practice Statement does expand on specific circumstances that may warrant an exemption, the criteria presented are generally reasonable. While disclosures that may genuinely harm Australia’s national security interests, or those of Australia’s allies, should be considered for an exemption, such circumstances are expected to be exceptionally rare, given the high-level nature of information required to be reported.

With regard to the potential breach of a foreign law, while the Practice Statement appropriately cautions against foreign laws intended “to frustrate the operation of Australia’s Public CBC reporting regime,” (para. 55), it should go further. It is important to make clear that no exemptive relief will be available with respect to any conflicting foreign law that is enacted after the effective date of the CBC law. To do otherwise would inadvertently create a perverse, self-sabotaging incentive for other countries to enact subsequent laws that supersede Australia’s CBC reporting requirements. Such safeguards are especially important in the context of the jurisdictional scope of the CBC reporting law, which requires disaggregated disclosures only for Australia and a selection of specified jurisdictions determined by the Treasury to pose significant base erosion and profit-shifting risks.

As mandatory public CBC reporting becomes more common in jurisdictions across the globe, it is also productive of the Practice Statement to note that the granting of an exemption to an entity by another jurisdiction does not necessarily mean that the ATO must follow suit.

Commercially Sensitive Information

FACT appreciates that the Practice Statement includes numerous “checks” to prevent exemptions from being inappropriately issued over broad, non-specific commercial sensitivity concerns. In particular, the Practice Statement properly clarifies that, to qualify for an exemption, “the disclosure of the information must rise beyond the level of harm already contemplated by parliament in implementing the reporting regime.” (para. 63). Other guidelines presented in the Practice Statement that also reinforce the intentional design and policy intent of the law include:

- Placing the onus on the applicant to present evidence and rationale for an exemption.
- Recognizing that public CBC reports are only required to be published up to a full year after the end of the relevant reporting period, reducing the likelihood that information contained therein will remain sufficiently sensitive at the time of publication as to merit an exemption.

- Favoring quantifiable, “real, or actual” detriment over “remote or hypothetical” harm when weighing an exemption request.
- Clarifying that exceptional circumstances will not be established based on a speculative claim of potential for detriment solely based on a reader misinterpreting or misunderstanding information in a Public CBC report. (para. 67)

This last point is absolutely critical. Throughout the consultation process, pushback from affected companies and trade groups focused heavily on investor-related and reputational risks that could arise from misinterpretation of published information. These risks – to the extent that they exist at all – were clearly considered and accepted by parliament when weighing the costs and benefits of mandatory public CBC reporting. Furthermore, these perceived risks are fundamentally “remote or hypothetical,” and based on the condescending assumption that relevant stakeholders (including journalists, watchdog groups, investors, and others) are incapable of analysing public information accurately and in good faith. As such, the final Practice Statement should retain paragraph 67, pertaining to misinterpretation or misunderstanding of published information.

Additionally, the ATO should consider clarifying that commercial sensitivity concerns must be temporary to qualify as “exceptional” for the purposes of determining whether an exemption should be granted. Where information deemed sufficiently commercially sensitive as to qualify for an exemption is present year after year, that information becomes, by definition, a function of the firm’s routine operations, and should therefore be disclosed in line with the law’s primary transparency purpose.

Relevance for Class Exemptions

While the Practice Statement applies only to exemption requests by individual entities, the ATO does note that “the principles in this Practice Statement may be relevant and informative to the Commissioner in considering whether to exempt a class of entities by legislative instrument...” (para 9). As FACT has argued in previous comments, broad exemptions, including those granted to classes of entities by regulation or legislative instrument, should be granted sparingly, if at all, in order to preserve the primary intended purpose of Australia’s public CBC reporting regime.

Transparency in the Exemption Process

While we agree that exemption requests by individual entities should remain confidential, any exemption requests on behalf of a class of entities should be made public. Additionally, with respect to successful exemption requests, we strongly urge the ATO or Treasury to publish an annual list of entities that have been granted full or partial exemptions. Such disclosure would not implicate any commercial sensitivity concerns, while supporting the stated transparency intent of the CBC reporting law by allowing stakeholders to monitor the year-on-year volume of exemptions granted, and particularly full exemptions.

Conclusion

FACT is grateful for the opportunity to comment and remains available for further discussion and input. Please contact Thomas Georges at tgeorges@thefactcoalition with any questions or comments.

Respectfully submitted,

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