



April 28, 2023

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

Submitted electronically via MNETaxTransparency@treasury.gov.au

Re: Consultation on Draft Amendments Regarding Public Country-by-Country Reporting

Dear Director,

On behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition, this letter responds to the government's invitation to comment on the exposure draft legislation and accompanying explanatory materials regarding Public Country by Country Reporting (PCbCR) dated April 6, 2023.¹ This letter welcomes the draft legislation amending the Tax Administration Act 1953 (TAA) to include greater public disclosure of tax and operational data from certain large multinational enterprises (MNEs), and FACT encourages the Australian government to swiftly advance the exposure draft in the form of final legislation. The comments below have been endorsed by Oxfam America.

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 PCbCR³ and has collaborated with policy-makers, investors, standard-setting bodies, and international advocates to advance PCbCR best practices and other tax transparency measures globally.

¹ Department of the Treasury (April 6, 2023), "Public country-by-country reporting," <https://treasury.gov.au/consultation/c2023-383896>

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 See, e.g., Ian Gary, Investors Fly Blind Without Public Country-by-Country Reports, Bloomberg Tax (Aug. 30, 2022), <https://news.bloombergtax.com/tax-insights-and-commentary/investors-fly-blind-without-public-country-by-country-reports>.

This draft legislation comes at a time when global momentum is building for increased tax transparency by large MNEs. While legislators and activists have long sought greater disclosure of tax and operational data by large firms for the purpose of identifying tax avoidance practices, investors worth trillions of dollars in assets under management are increasingly demanding PCbCR data as a tool to better understand the corporate governance, regulatory, geopolitical, and supply chain risks associated with particular firms.⁴ In the U.S., growing investor demand for this data has prompted the Financial Accounting Standards Board (FASB) to release draft recommendations requiring greater disaggregation of reported tax data from certain multinationals,⁵ and the U.S. Securities and Exchange Commission (SEC) has signaled its understanding of the importance of greater disaggregation for tax and operations reporting.⁶

While limited measures mandating the publication of disaggregated tax and operational data have been advanced by certain jurisdictions in recent years, notably including in the European Union,⁷ these measures fall short of the GRI 207-4⁸ standards – developed in consultation with businesses, accountants, and transparency experts – on which the draft legislation that is the subject of this comment is largely based. By advancing this draft legislation, the Australian government has positioned itself as a global leader on tax transparency, and has taken a necessary step toward addressing existing information asymmetries between MNEs, investors, policymakers, academics, civil society, and other potential users of PCbCR data.

Comments:

1. Definition of reporting entities

⁴ FACT (Sept. 22, 2021), “63 Investors with \$2.9 trillion in Assets Under Management Send Letter to FASB in Support of Tax Transparency,” <https://thefactcoalition.org/62-investors-with-2-9-trillion-in-assets-under-management-sendletter-to-fasb-in-support-of-tax-transparency/>; FACT (May 11, 2021), “66 Investors with \$2.9 Trillion in Assets Under Management Show Support for the Disclosure of Tax Havens and Offshoring Act,” <https://thefactcoalition.org/64-investors-with-nearly-2-9-trillion-in-assets-under-management-show-support-for-the-disclosure-of-tax-havens-andoffshoring-act/>; FACT (December 21, 2022), “Microsoft, Cisco Shareholder Votes Demonstrate Increasing Investor Demand for Tax and Offshore Transparency,” <https://thefactcoalition.org/microsoft-cisco-shareholder-votes-demonstrate-increasing-investor-demand-for-tax-and-offshore-transparency/>.

⁵ Financial Accounting Standards Board (March 31, 2023), “Disaggregation—Income Statement Expenses,”

<https://www.fasb.org/Page/ProjectPage?metadata=fasb-Disaggregation%E2%80%94IncomeStatementExpenses-022820221200>

⁶ FACT (September 15, 2022), SEC Chair Says Agency Considering Stronger Disclosures for Investors Regarding Corporate Tax Practices in Senate Testimony,

<https://thefactcoalition.org/sec-chair-says-agency-considering-stronger-disclosures-for-investors-regarding-corporate-tax-practices-in-senate-testimony/>

⁷ Official Journal of the European Union (November 24, 2021), “DIRECTIVE (EU) 2021/2101 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches,”

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021L2101&from=EN>

⁸ Global Reporting Initiative (September, 2019), “GRI 207: Tax,”

<https://www.globalreporting.org/standards/media/2482/gri-207-tax-2019.pdf>

FACT urges Australia to maintain, as proposed, the scope of entities subject to PCbCR requirements, including certain Australian resident entities and foreign parented MNEs with Australian permanent establishments.⁹ It is hard to overstate the importance of including certain foreign-parented MNEs with permanent establishments in Australia in PCbCR requirements, as the Australian economy is an attractive investment destination for these MNEs but has comparatively few relevant companies headquartered in the jurisdiction. Limiting the scope of application for PCbCR reporting requirements could significantly limit the utility of this information as it applies to creating sound policy that benefits the Australian economy, and may potentially lead to distortive tax practices to avoid transparency.

As the government notes in its explanatory materials accompanying the draft legislation, international momentum has gathered behind efforts for greater tax transparency in recent years, reflecting a shift in public sentiment towards greater accountability for large businesses.¹⁰ **By capturing large foreign-parented MNEs in sufficiently fulsome PCbCR requirements, the government has an opportunity to lead a sea-change in global tax transparency, establishing a strong standard by which subsequent regimes may be measured and incentivizing other jurisdictions to take complementary actions.**

2. Scope and nature of public information

FACT supports the government's decision to require information with respect to any given reporting entity that is consistent with international best practices, including Global Reporting Initiative (GRI) 207-4, and that takes various multilateral coordinated tax reform efforts into consideration, including those being advanced at the Organization for Economic Cooperation and Development (OECD). Australia is also unilaterally improving on these standards by requiring certain additional information, such as additional details relating to intangible assets, which are fundamental to understanding the tax planning strategies employed by MNEs, and which complement standards like GRI 207-4.¹¹

In particular, FACT supports requiring details on the intangible assets held by reporting entities, as well as expenses from related party transactions, as the publication of these metrics will dramatically enhance the ability of end users to identify tax avoidance strategies being utilized by a given entity, such as profit shifting and transfer pricing. FACT agrees with the government's assessment that "The presence of related party transactions and increases in intangible assets are

⁹ Department of the Treasury (April 6, 2023), "Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational tax transparency - Tax changes" Subsection 3D(1)(a-d), https://treasury.gov.au/sites/default/files/2023-04/c2023-383896-ed_0.pdf

¹⁰ Department of the Treasury (April 6, 2023), "Exposure Draft Explanatory Materials" Section 1.3, <https://treasury.gov.au/sites/default/files/2023-04/c2023-383896-em.pdf>

¹¹ Department of the Treasury (April 6, 2023), "Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational tax transparency - Tax changes" Subsection 3D(6)(a-m)

specific indicators of corporate governance risk and would complement the GRI 207 disclosures.”¹²

To the end of providing complete and comparable data for end users, FACT supports the decision of the government to require publication of the information outlined above and specified in the draft legislation “in respect of each jurisdiction in which the country by country reporting group operates...”¹³ **Critically, Australia should consider clarifying that the use of the word “operates” is not meant to be a limiting characteristic based on physical activity, and includes any jurisdiction in which the MNE has a legal, physical, financial, or other presence.** Failing to require this information for each such jurisdiction may result in an incomplete picture regarding the tax strategies employed by large MNEs, including with respect to tax dodging practices that may be facilitated by a myriad of jurisdictions (and not just those historically labeled as “tax havens”). In doing so, Australia can also avoid this reporting regime becoming a tool of politics, rather than a tool of policy, as may be the case in jurisdictions where PCbCR reporting is limited to certain “problematic” jurisdictions.

The combination of information required to be reported under the draft amendments fulfills the government’s stated intention to “provide the public with a comprehensive picture of (a) CBC reporting group’s tax affairs while minimising the compliance and administrative burden imposed on the CBC reporting parent,”¹⁴ as well as to “provide a picture of how (an) entity structures its tax affairs in Australia and globally.”¹⁵ FACT agrees that the compliance burdens associated with reporting requirements introduced under the draft amendments are ameliorated by significant overlap between existing confidential CbCR requirements under the ITAA 1997 – which are largely consistent with those also adopted around the globe pursuant to the confidential OECD Action Item 13 – and the proposed PCbCR regime.¹⁶

Additionally, FACT welcomes the inclusion of language through which further regulations may enhance or otherwise expand on reporting requirements prescribed by the draft legislation, so as to keep reporting requirements consistent with evolving best-practices and recommendations established by the GRI or other such bodies.¹⁷

FACT also encourages the government to include GRI Disclosure 207-4, Reporting Recommendation 2.3.4¹⁸ on “industry-related and other taxes or payments to governments” as a required element of the legislation. These disclosures are particularly relevant in sectors, like

¹² Department of the Treasury (April 6, 2023), “Exposure Draft Explanatory Materials” Section 1.19

¹³ Department of the Treasury (April 6, 2023), “Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational tax transparency - Tax changes” Subsection 3D(5)(c)

¹⁴ Department of the Treasury (April 6, 2023), “Exposure Draft Explanatory Materials” Section 1.21

¹⁵ Department of the Treasury (April 6, 2023), “Exposure Draft Explanatory Materials” Section 1.17

¹⁶ Department of the Treasury (April 6, 2023), “Exposure Draft Explanatory Materials” Section 1.22

¹⁷ Department of the Treasury (April 6, 2023), “Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational tax transparency - Tax changes” Subsection 3D(5)(d)

¹⁸ Global Reporting Initiative (September, 2019), “GRI 207: Tax” Section 2.3.4

mining, oil and gas, where fiscal instruments other than corporate income tax play a significant role in the fiscal regime, as the collection of these revenues may also be adversely impacted by abusive tax avoidance or corrupt financial practices. Disclosure of payments-to-governments at a project-level in line with international best practice can help mitigate against these risks.

3. Entities exempted from reporting requirements

The government's draft legislation contemplates a number of circumstances under which specific entities or classes of entities may be exempted from PCbCR, or may otherwise be exempted from publishing specific categories of required data.¹⁹ **Exemptions have a potential to undermine the transparency of this PCBCR proposal, and should be thoughtfully considered before being granted.** Data is most helpful to end users – whether investors, policymakers or the public – when it is fulsome, standardized, and comparable.

At a minimum, the government should ensure that the decision making process surrounding exemptions is transparent and conforms to a clear, consistent standard.

Exemptions that apply to entire entity classes – which under the draft legislation may only be applied via legislative instrument²⁰ – should, in particular, be issued very sparingly so as to ensure that PCbCR requirements cover as wide a range of relevant entities as is appropriate.

Similarly, the draft legislation allows the Commissioner to exempt specific government entities that “are subject to alternative disclosure or accountability regimes through government budget processes.”²¹ In order to maximize transparency, government-related entities should only be issued exemptions in cases when the entity in question is already subject to one or more disclosure regimes that are *comparable in nature and scope* to the draft legislation's PCbCR requirements.

FACT also recommends that the government publish and maintain a list of exempted entities, classes of entities, and entities that are otherwise exempted from disclosures pertaining to particular information under the PCbCR regime, as well as the reasons for said exemptions, alongside disclosures for a given income year.

Conclusion:

Through this draft legislation, the government has introduced a strong, durable framework that may serve as a model for other jurisdictions seeking to introduce or enhance their own tax

¹⁹ Department of the Treasury (April 6, 2023), “Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational tax transparency - Tax changes” Subsection 3D(13-18)

²⁰ Department of the Treasury (April 6, 2023), “Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational tax transparency - Tax changes” Subsection 3D(13)

²¹ Department of the Treasury (April 6, 2023), “Exposure Draft Explanatory Materials” Section 1.16

transparency regimes. FACT applauds the government for its actions to arm legislators, investors, journalists, and other end users of PCbCR data with information needed to better assess the tax practices of large MNEs, and to strengthen public faith in the domestic and international tax systems.

FACT is grateful for the opportunity to comment, and remains available for further discussion and input. Please contact Ian Gary at igary@thefactcoalition with any questions or comments.

Respectfully submitted,

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