September 1, 2022

To: Director, International Tax Branch, Corporate and International Tax Division

Submitted electronically via MNETaxIntegrity@treasury.gov.au

Re: Consultation on Multinational Tax Integrity and Tax Transparency

Dear Director:

On behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition, this letter responds to the invitation to comment on Part 3 of the consultation paper regarding Multinational Tax Integrity and Tax Transparency dated August 5, 2022.[1] This letter endorses the comments submitted by Pensions & Investment Research Consultants Ltd (PIRC), and adopts as its own PIRC's responses to Part 3, questions 8-20.

More specifically, this letter encourages the Australian Treasury (Treasury) to ensure enhanced tax transparency by multinational enterprises (MNEs) by:

1. **Mandating full public country-by-country reporting (PCbCR) regarding all jurisdictions where large MNEs (defined below) operate.** (**Part 3 Questions**: 1, 4, & 5)
2. **Defining reporting large MNEs to include any "significant global entity," as defined under Subdivision 960-U of the Income Tax Assessment Act 1997 (ITAA 1997).** (**Questions**: 2 & 3)
3. **Requiring PCbCR consistent with 207-4 (Country-by-country reporting) of the Global Reporting Initiative (GRI) 207 standard.** (**Part 3 Questions**: 6 & 7)

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

[1] Treasury.gov.au, "Multinational Tax Integrity and Tax Transparency," https://treasury.gov.au/consultation/c2022-297736.

practices.[2] FACT is a leading voice for PCbCR[3] and has collaborated with policy-makers, investors, standard-setting bodies (including GRI), and international advocates to advance PCbCR best practices and other tax transparency measures globally. Most recently, FACT clearly laid out the investor case for PCbCR – as well as why partial PCbCR or tax disaggregation standards are not adequate – in our July 2022 report: "*A Material Concern: The Investor Case for Public Country-by-Country Tax Reporting*," attached as **Annex A** to this letter.[4]

The FACT Coalition welcomes this invitation to comment, which presents tax transparency reforms that would make Australia a global leader in implementing necessary policies to correct information asymmetries between MNEs, investors, policymakers, academics, civil society, and other potential users of PCbCR. By adopting FACT and PIRC recommendations, Treasury would resolve these information asymmetries in furtherance of Treasury's goals to promote less aggressive and more sustainable MNE behaviors and encourage greater public trust in the tax system.

Introduction:

The case for PCbCR in Australia

The UN estimates that governments lose more than $500 billion a year from MNE profit shifting – facilitated by the digitization of the global economy. In 2018 alone, Australia likely lost up to $25 billion (or A$35.8 billion) as a result of MNE profit shifting by both Australian and foreign-parented MNEs.[5] Coordinated efforts to curb global profit shifting and hold MNEs accountable for their global tax practices are necessary to build a more resilient global economy and further a more sustainable future.

As Treasury notes, to begin tackling the scourge of profit shifting, global tax authorities began collecting and exchanging country-by-country tax information for large MNEs pursuant to OECD Base Erosion and Profit Shifting (BEPS) Action Item 13.[6] This information is, at present, collected and exchanged between "competent authorities" on a confidential basis.

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[2] A full list of FACT members is available at: Financial Accountability and Corporate Transparency (FACT) Coalition, "Coalition Members," 2022, 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.

[4] FACT Coalition, A Material Concern: The Investor Case for Public Country-by-Country Tax Reporting, 45-46 (Jul. 28, 2022), https://thefactcoalition.org/wp-content/uploads/2022/07/FACT-Report-Final-Final-_-Reduced.pdf.

[5] Thomas Torslov, Ludvig Wier & Gabriel Zucman, The Missing Profits of Nations, Review of Economic Studies (2022), https://missingprofits.world/ (updated 2018 estimates). Real evidence of this profit-shifting is found in examples like Rio Tinto, which after years of protracted tax fighting with Australian competent authorities agreed to pay A$613 million recently to resolve disputes relating to its shifting of profits to Singapore. *See* **R**io Tinto agrees to pay nearly $1 billion in tax avoidance settlement with Australian Tax Office, Reuters (Jul. 20, 2022), https://www.abc.net.au/news/2022-07-21/rio-tinto-settles-1b-tax-bill-ato/101256184.

[6] Critically, a recent OECD analysis finds that only three lower-middle-income countries have effective access to country-by-country information collected by other competent tax authorities. See IMF, Fiscal Policy from Pandemic to War, Chapter 2, p. 33 (2022), https://www.imf.org/en/Publications/FM/Issues/2022/04/12/fiscal-monitor-april-2022.

Nonetheless, investors, public-policy officials, civil society, and other stakeholders remain completely in the dark on the tax-dodging practices of MNEs in Australia and across the world, on a case-by-case basis. Public disclosure requirements for large publicly listed companies also do not provide adequate information to understand these practices across jurisdictions.

Consider that the "information asymmetries" identified by Treasury between MNEs and competent tax authorities, which helped to justify OECD Action Item 13, also exist between MNEs, on the one hand, and policymakers, investors, academics, civil society and other potential users of PCbCR information, on the other hand. Confidential country-by-country reporting under OECD Action Item 13 may address only one type of these information asymmetries, weakening the ability for country-by-country reporting to best address MNE tax participation and promote public trust in the tax system.

For policy-makers, academics, and civil society, information asymmetries' stymie productive national and international tax negotiations meant to ensure that MNEs and their owners are appropriately taxed. For the public, secrecy regarding MNE tax practices, which both politically empowers and entrenches financial secrecy generally for the largest MNEs and wealthiest taxpayers (who tend to principally own these MNEs), erodes public trust in not only the tax system but in global democratic institutions more broadly.

Additionally, for investors, the failure to provide PCbCR can lead to misallocation of capital and greater market volatility stemming from tax and geopolitical risks. Our attached report, "*A Material Concern: The Investor Case for Public Country-by-Country Tax Reporting*"[7] further details these issues. Our report gives examples that highlight the information gap facing investors and other users of financial statements for multinationals such as **Amazon, Pfizer, McDonalds, Shell and Dell–all of whom have an Australian presence**. For example, according to Amazon's U.S. Securities and Exchange Commission (SEC) filings, the international tech behemoth recently relocated certain valuable intangible property rights back to the U.S. This restructuring might have material tax and related cash flow consequences, but it is difficult to tell the extent of these consequences based on the public securities laws currently only requiring blanket "domestic" and "international" tax information.

MNEs are more likely to engage in less aggressive and more sustainable practices when these information asymmetries are addressed. Indeed, PCbCR efforts in the EU regarding financial institutions provide convincing evidence that PCbCR is an effective tool to encourage taxpayers to engage in less aggressive tax behavior.[8] Similarly, with PCbCR investors will be able to

While this does not address Treasury's stated concerns, it is relevant in light of global governance standards (including as it relates to trust in systems like tax that can be a pillar of democracy) that many of the countries in the world that are most comparatively ravaged by profit shifting are not presently able to access confidential country-by-country reporting information. This might contribute to international corruption that threatens Australian national security.

[7] FACT Coalition, A Material Concern: The Investor Case for Public Country-by-Country Tax Reporting, 45-46 (Jul. 28, 2022), https://thefactcoalition.org/wp-content/uploads/2022/07/FACT-Report-Final-Final-_-Reduced.pdf.

[8] See Michael Overesch and Hubertus Wolff, Financial Transparency to the Rescue: Effects of Country-by-Country Reporting in the EU Banking Sector on Tax Avoidance (2020), https://www.econbiz.de/Record/financial-transparency-to-the-rescue-effects-of-country-by-country-reporting-in-the-eu-banking-sector-on-tax-avoidance-overesch-michael/10012853394.

identify overly aggressive tax planning strategies and invest accordingly, working to also decrease market volatility. Simultaneously, this too might encourage more responsible MNE tax governance practices, placing direct onus on senior leadership to understand and direct strategic tax decisions, and creating greater public accountability for these practices.

These “firm” level effects, in aggregate, can have greater significance. First, less aggressive tax practices by MNEs may result in increased government revenues helping to fund responses to critical challenges, like climate change. Second, MNEs currently rely on financial secrecy practices and jurisdictions to shift profits, and the ability for MNEs to play by a different set of rules through simple “paper” transactions erodes trust in tax systems. Notably, the same financial secrecy that enables profit shifting also enables the type of global corruption that undermines well-functioning democracies. MNEs are presently financially incentivized to expend political capital to preserve and politically entrench these secrecy practices. Through greater transparency, PCbCR can correct these improper incentives. In turn, this may also improve public trust in our tax systems and democratic institutions more broadly.

The Timing is Right for Australian PCbcR

Global momentum for PCbCR is growing, and Treasury’s efforts are well-timed to take advantage of (and improve upon) many of these efforts. In 2019, following robust consultation with businesses, investors, academics, and civil society, the Global Reporting Initiative (GRI) introduced the gold-standard of voluntary PCbCR standards. The GRI 207 standard leverages OECD-based data to minimize reporting costs for reporting filers, while also creating a standard that maximizes information utility by addressing each category of information asymmetries identified above. Reporting under the GRI standard officially began in 2021.

In June 2021, the United States House of Representatives passed legislation,[9] which would require the U.S. SEC to implement mandatory PCbCR reporting requirements for covered MNEs. Companion Senate legislation is under consideration. In our recent report, attached as **Annex A,** FACT is calling on the U.S. SEC to use its current legal authority to require PCbCR for large filers under SEC jurisdiction. Doing so would complement the Treasury efforts the subject of this letter and create greater transparency across the globe.

In November 2021, the European Union (EU) implemented a limited form of PCbCR, effective in 2024.[10] Positively, the EU standard recognizes the ways in which interested stakeholders face information asymmetries resulting in undesirable tax policy with respect to both foreign and domestic MNEs, and the EU standard will require foreign MNEs to report to the extent sufficient contacts are established. This means Australian, American and EU headquartered MNEs may all begin to share some PCbCR information pursuant to the EU standard. Problematically, the EU standard is limited in its scope, requiring large multinationals to disclose information

[9] See FACT Coalition, House Takes Historic Step in Advancing Corporate Tax Transparency (Jun. 16, 2021), https://thefactcoalition.org/house-takes-historic-step-in-advancing-corporate-tax-transparency/.

[10] *See* Corporate tax transparency: MEPs okay new country-by-country reporting rules, European Parliament (Nov. 2021), https://www.europarl.europa.eu/news/en/press-room/20211108IPR16839/corporate-tax-transparency-meps-okay-new-country-by-country-reporting-rules.

regarding only the EU and "non-cooperative jurisdictions" operations. The latter list is largely political and would not shed any information on well-known tax havens like Switzerland, Singapore, or even the United States, for example. This partial standard will not adequately resolve information asymmetries for those intended to use PCbCR.

Now is the prudent time for Treasury to advance fulsome PCbCR standards for large MNEs generating income in (or revenues resulting from final consumption or use in) Australia in line with GRI best practices.

Growing Global Investor Support

An international consortium of investors, guided by FACT's work and PIRC's investment advice, have become vocal supporters for PCbCR. In the United States, investors with trillions of dollars in assets under management have urged Congress to act on PCbCR. Investors have also called for greater disaggregation of tax information at the Financial Accounting Standards Board (FASB), the independent U.S. generally accepted accounting principles (GAAP) standard-setter.[11] Investors also led the way in pushing for EU PCbCR,[12] and we expect this momentum to continue to grow.

Separately, activist investors are increasingly pressing large U.S. multinationals to disclose PCbCR consistent with GRI standards in the U.S. In May 2022, more than 21% of Amazon Inc.'s independent shareholders, worth more than $144 billion, voted in favor of a shareholder resolution directing the giant to report PCbCR in line with the GRI standard following the SEC's rejection of Amazon's attempted dismissal of the resolution.[13] Leading proxy advisory firm Glass Lewis recommended shareholders vote in favor of the proposal. In June 2022, similar PCbCR proposals were filed by Microsoft and Cisco shareholders.

Responses:

1. **Mandating full public country-by-country reporting (PCbCR) regarding all jurisdictions where large MNEs operate** (**Part 3 Questions**: 1, 4, & 5)

FACT encourages the Treasury to implement PCbCR that requires disclosure with respect to all jurisdictions where large MNEs operate. To address information asymmetries and address Treasury's stated goals, FACT believes that PCbCR is most useful only when it provides a complete and comparable picture of MNE operations. The use of partial standards undermines

[11] 63 Investors with $2.9 trillion in Assets Under Management Send Letter to FASB in Support of Tax Transparency, FACT (Sept. 22, 2021), https://thefactcoalition.org/62-investors-with-2-9-trillion-in-assets-under-management-send-letter-to-fasb-in-support-of-tax-transparency/; 66 Investors with $2.9 Trillion in Assets Under Management Show Support for the Disclosure of Tax Havens and Offshoring Act, FACT (May 11, 2021), https://thefactcoalition.org/64-investors-with-nearly-2-9-trillion-in-assets-under-management-show-support-for-the-disclosure-of-tax-havens-and-offshoring-act/.

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[13] Amazon Investors Push Company on Global Tax Transparency, FACT (May 27, 2022), https://thefactcoalition.org/amazon-investors-push-company-on-global-tax-transparency/.

the utility and comparability of this information in using PCbCR information to bring greater public scrutiny to MNE tax practices and to build trust in the tax system.

2. **Defining reporting large MNEs to include any "significant global entity," as defined under Subdivision 960-U of the Income Tax Assessment Act 1997 (ITAA 1997)** (**Part 3 Questions**: 2 & 3)

FACT agrees that "significant global entity" is the right definition as it includes a Global Parent Entity (GPE) or a member of a group of consolidated entities for accounting purposes as a single group, where either the GPE or the group's annual global income is equal to or exceeds A$1 billion, whether headquartered in Australia or overseas (with or without local operations).

Alternatively, and less preferably, the Treasury might consider employing a definition similar to the definition Australia already uses with respect to country-by-country reporting entities and country-by-country reporting groups; provided, that, in any case, FACT recommends Treasury adopt a definition that applies to both domestic and foreign-parented MNE groups so long as any applicable connections with Australia are established.

FACT believes that the connections required under the EU standard are too onerous to be practicable for Australia as a single jurisdiction, however. Instead, FACT recommends a lower threshold that might be triggered not only by Australian operations and established income reporting obligations, but also by sufficient contacts with Australia as a market jurisdiction in light of the recent international tax agreement at the OECD that would, pursuant to "Pillar one" reallocate certain taxing rights to those jurisdictions where goods or services are ultimately consumed or used.[14] Acknowledging Australian contacts based on a jurisdiction of final consumption or use would be particularly useful for PCbCR purposes in establishing a greater understanding of whether current Australian tax rules are adequate for those users of PCbCR who may be contemplating tax policy to ensure MNEs are appropriately contributing in Australia, or in evaluating trust in the Australian tax system.

FACT generally endorses PIRC's views on any transition period.

3. **Requiring PCbCR consistent with 207-4 (Country-by-country reporting) of the Global Reporting Initiative (GRI) 207 standard** (**Part 3 Questions**: 6 & 7)

As stated above, FACT endorses the Treasury implementing PCbCR by effectively adopting the GRI 207 standard, subject to necessary adjustments that reflect Australian law. The GRI standard was completed following fulsome consultation with businesses, investors, academics, and others to create a standard that leverages OECD country-by-country reporting information to create highly useful information to investors, policy-makers, academics, civil society, and

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[14] Cf. KPMG report: EU "public" country-by-country reporting and implications for multinational groups, KPMG (Nov. 21, 2022), https://home.kpmg/us/en/home/insights/2021/11/tnf-kpmg-report-eu-public-cbc-reporting-and-implications-for-multinational-groups.html (explaining EU thresholds); OECD, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (Oct. 8, 2021), https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm.

other users of PCbCR information at minimal additional costs. For those new filers, the GRI standard is designed to require filers to incorporate best tax governance practices regardless of size – practices that investors and other stakeholders have an interest in seeing employed outside the PCbCR context, as well. Partial standards, like those adopted in the EU, are not adequate substitutes.

Conclusion:

Treasury should be commended for its proposal to improve greater MNE tax transparency practices in Australia. Implementing PCbCR as recommended in this letter will have tangible benefits to Australian taxpayers, accelerate global momentum for the adoption of PCbCR regimes in other major jurisdictions. FACT is grateful for the opportunity to comment, and can be available to discuss further. Please contact Ryan Gurule at rgurule@thefactcoalition.org with any questions or comments.

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Annex A

A Material Concern: The Investor Case for Public Country-by-Country Tax Reporting

(attached)