



July 21, 2023

To: Australian Senate, Economics Legislation Committee

Submitted electronically via seniorclerk.committees.sen@aph.gov.au

Re: Treasury Laws Amendment (Making Multinationals Pay Their Fair Share-Integrity and Transparency) Bill 2023 [Provisions]

To the Committee,

On behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition, this letter responds to the Australian Senate Economics Legislation Committee's inquiry regarding the Treasury Laws Amendment (Making Multinationals Pay Their Fair Share-Integrity and Transparency) Bill 2023.¹ This letter welcomes the Senate's introduction of important updates to disclosure requirements surrounding the subsidiaries of public companies, and recommends that Parliament support full implementation of the government's commitment on multinational tax integrity.

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 alongside policy-makers, investors, standard-setting bodies, and international advocates to advance tax transparency measures globally.

Schedule 1—Multinational Tax Transparency—Disclosure of Subsidiaries

The FACT Coalition supports the proposed enhanced disclosures surrounding subsidiaries related to Australian public companies, as introduced, and agrees with the bill's explanatory memorandum in its assertion that "increased public disclosures will lead to enhanced scrutiny on companies' arrangements, including how they structure their subsidiaries and operate in different jurisdictions, including for tax purposes."³

¹ Parliament of Australia, "Treasury Laws Amendment (Making Multinationals Pay Their Fair Share-Integrity and Transparency) Bill 2023 [Provisions]," June 22, 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/TLABMultinationalTax

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 Parliament of Australia, "Treasury Laws Amendment (Making Multinationals Pay Their Fair Share-Integrity and Transparency)

In particular, FACT supports the application of the following new disclosure requirements⁴ for public companies that already prepare financial statements in relation to a consolidated entity:

- ❖ The names of each entity in the consolidated entity;
- ❖ The tax residency status of each entity in the consolidated entity;
- ❖ If the entity is a body corporate—the place at which the entity was incorporated or formed, and;
- ❖ The percentage of each entity’s issued share capital that was held, directly or indirectly, by the reporting company at the time of reporting;

FACT notes, and applauds, that these reporting requirements apply with respect to each entity in a given consolidated entity, without the application of a subjective materiality threshold.⁵ The inclusion of a quantitative threshold for reporting under this legislation would only serve as an “escape hatch” for companies to avoid transparency through creative restructuring, and would undermine the government’s stated intent to require publication of information necessary for the public to assess a company’s corporate structure.

FACT agrees with the government’s assessment that these new disclosure requirements will “have an observed compliance effect only on entities with complex structures,”⁶ and supports the decision to incorporate subsidiary reporting into companies’ existing reporting processes in order to minimize compliance burdens.

This measure alone—while a productive step towards transparency—is not enough to provide the public with a sufficiently detailed view of a given multinational’s corporate structure and tax practices, however. In its explanatory memorandum, the government notes that “**When applied with the public CbC reporting option, (subsidiary disclosures) will hold companies to greater account on their corporate structuring/tax affairs.**”⁷ To that effect, FACT strongly supports the implementation outline for public country-by-country (CbC) reporting included in the explanatory memorandum (see below).⁸

Bill 2023, Explanatory Memorandum,” Section 1.5, June 22, 2023, https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7057_ems_7c4f8fd3-6288-4036-a7ac-cf8d4c14da4b/upload_pdf/C010008.pdf;fileType=application%2Fpdf

⁴ Parliament of Australia, “Treasury Laws Amendment (Making Multinationals Pay Their Fair Share–Integrity and Transparency) Bill 2023,” Schedule 1, Section 2, Subsection 3A, June 22, 2023, https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r7057_first-reps/toc_pdf/23087b01.pdf;fileType=application%2Fpdf

⁵ Parliament of Australia, “Treasury Laws Amendment (Making Multinationals Pay Their Fair Share–Integrity and Transparency) Bill 2023, Explanatory Memorandum,” Policy Options, Disclosure of Subsidiary Information, June 22, 2023

⁶ Parliament of Australia, “Treasury Laws Amendment (Making Multinationals Pay Their Fair Share–Integrity and Transparency) Bill 2023, Explanatory Memorandum,” Policy Options, Disclosure of Subsidiary Information, June 22, 2023

⁷ Parliament of Australia, “Treasury Laws Amendment (Making Multinationals Pay Their Fair Share–Integrity and Transparency) Bill 2023, Explanatory Memorandum,” Policy Options, Disclosure of Subsidiary Information, June 22, 2023

⁸ Parliament of Australia, “Treasury Laws Amendment (Making Multinationals Pay Their Fair Share–Integrity and Transparency) Bill 2023, Explanatory Memorandum,” Policy Options, Public Country-by-Country Reporting, June 22, 2023

Explanatory Memorandum—Public Country-by-Country Reporting

The implementation outline for public CbC reporting contained within the explanatory memorandum to this legislation represents a critical element of the government’s election commitment on multinational tax integrity, and would complement enhanced subsidiary disclosures by requiring additional information pertaining to a given multinational’s tax and operational practices.

FACT strongly recommends that Parliament introduce final public CbC legislation that hews to the current implementation outline with respect to:

- ❖ Each category of information required to be disclosed, including revenues broken out into related and third-party categories, profit/loss before tax, number of employees, and book value of tangible assets, among others;
- ❖ The proposed scope of reporting requirements, which includes each jurisdiction in which a given multinational operates, without the application of a materiality or other threshold for disaggregated reporting, and without exemption of any particular jurisdictions (as in the European Union’s public CbC directive);
- ❖ The requirement that sweeping entity-type or class-based exemptions be granted only by legislative instrument, and;
- ❖ An application date of July 1, 2024.

Public CbC reports will be most useful—and most complimentary to both existing disclosure requirements and those contemplated in this legislation—when they provide a holistic view of a given company’s global operations. The current implementation outline achieves this goal. It further does so in a way that minimizes compliance costs for affected entities, by leveraging existing CbC reporting regimes (e.g. the EU directive and OECD BEPS Action 13). As such, FACT urges Parliament to move forward with the existing outline without further substantial revisions.⁹

Conclusion

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.

⁹ For more information on FACT’s position with regard to Australia’s PCbCR draft legislation and current implementation outline, see The 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

Respectfully submitted,

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