International Corporate Tax Transparency Update: September 2023

The international corporate tax transparency landscape has undergone transformational change in the last few months: major reforms with global implications are marching forward in jurisdictions including the European Union, Australia, and the United States. These reforms, to various degrees, relate to public country-by-country reporting (public CbCR), a framework under which major multinational corporations are required to publish detailed reports on their offshore operations and tax structures, broken down by jurisdiction.

FACT has long advocated for public CbCR not only as a tool to shine a light on multinational tax avoidance, but also as a means to better inform investors of the risky tax practices of the businesses in their portfolios. Earlier this year, FACT's former policy director Ryan Gurule wrote that "international and domestic developments have fundamentally changed the question of whether public CbCR by large multinationals will ever occur to the questions of how such reporting will occur and when it will begin." This statement largely holds true, notwithstanding recent delays and concerted pushback from big business. **Progress on public CbCR in jurisdictions around the globe continues to reinforce the need for decisive action by the Securities and Exchange Commission (SEC) to set a consistent, strong standard for multinational public tax reporting**.

With reporting set to begin as early as 2024 under the EU's public CbCR directive, and with Australia and the U.S. in the process of finalizing plans to require more substantial disclosures of tax and financial information from multinationals, it is worth briefly addressing each of these efforts: where they currently stand, where they agree, what pitfalls still await during implementation, and what their ultimate impacts will be.

The European Union: Concrete, if Limited, Progress

The European Union passed a directive in 2021 mandating a limited form of public CbCR for large multinationals, including both EU-based multinationals that are active in more than one member state, as well as non-EU-based multinationals with substantial subsidiaries in the EU. While this reporting regime will undoubtedly provide some new information to the public, the

measure was substantially watered down over the course of nearly half a decade of negotiations and reported undue influence from business interests.

The provision, while a positive step forward, has significant limitations in regard to its coverage of multinational corporations, the geographical scope of covered operations, as well as the types of information required for reporting.

The EU directive, as adopted, only requires companies to disclose information on their operations within the EU and in those nations on the EU's "black" and "gray" lists of non-cooperative jurisdictions. These lists are in no way inclusive: major tax havens such as Bermuda, the Cayman Islands, and Singapore are not included, and lists have been criticized as a political, rather than objective, tool for tax enforcement purposes. As such, under the EU directive, reporting companies are allowed to lump together their operations outside of the covered jurisdictions in the EU, blacklist, and greylist countries into one, opaque "black box." Reporting companies also have substantial latitude to withhold information deemed to be "commercially sensitive" – which the directive fails to define – for up to five years.

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The categories of information required to be published under the EU plan leave much to be desired as well. Notably, CbC revenues are not required to be broken down into related and third-party categories, limiting the ability of investors, policymakers, and the public to assess the tax practices and business structures of particular multinationals. Also omitted is information on tangible assets, reconciliation of income tax accrued against taxes paid, and other disclosures required under other, more comprehensive regimes.

As an EU directive, this limited form of public CbCR still has to be formally adopted ("transposed") into law by each individual member state. As of July 20, nearly one month after the deadline to fully transpose the measure, 17 member states had yet to do so. Meanwhile, reports indicate that the European Commission has directly warned member states concerned

with the ultimate efficacy of this regime against writing improvements into their own transpositions of the directive.

While the EU directive represents a step in the right direction, it is clear that it does not constitute true, comprehensive public CbCR. By limiting the jurisdictional scope of reporting, the EU plan leaves the door open for companies that wish to limit transparency to restructure their operations. This central flaw seriously compromises the efficacy of the EU's regime, as does the vast amount of information that will inevitably be omitted from companies' reports due to carve-outs and concessions.

Other jurisdictions, however, have retained an interest in more complete transparency measures even as the EU has submitted to compromises and half-measures. Progress in Australia, in particular, has given tax justice advocates hope that a new international standard of transparency is already taking shape.

Australia: A Massive Transparency Win in the Making

Last year, the newly elected Labor government came into power with a commitment to take meaningful steps to address multinational corporate tax dodging, including through implementation of the world's first comprehensive public CbCR regime for large multinational entities. The Australian Treasury followed up on that commitment in April by releasing draft legislation that would establish by far and away the world's most effective public CbCR regime for large entities doing business in Australia.

The draft legislation was world class on many levels. Most importantly, its scope would include any individual entity or consolidated entity doing business in Australia whose annual global income is AUS$1 billion or more, with the burden of reporting falling on the parent entity. The government estimates that the number of affected entities will total around 2,500. **This would likely cover US-based global giants including Exxon, Chevron, Microsoft, Amazon, Nike, and more, all of which would have to begin reporting on their entire network of subsidiaries around the globe**. The draft legislation also unilaterally improved upon its strong source material – the Global Reporting Initiative (GRI) 207-4 public CbCR standard, developed through robust consultation with various stakeholders – by requiring additional disclosures pertaining to a given company's related party expenses, intangible assets, and effective tax rates in each jurisdiction of operation.

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Following a public consultation process earlier this year, final legislation was expected to be introduced to Parliament in June, with passage all but assured by the Labour-led coalition in power. Instead, on June 22, the government introduced a package of related multinational taxation measures and provided an update on its public CbCR proposal through an explanatory memorandum. The new implementation outline removed the additional disclosure requirements that went above and beyond the GRI 207-4 standard, and delayed application of the measure until July 1, 2024.

Make no mistake: even with these changes, Australia's proposal as detailed in the current implementation outline still represents the most comprehensive and powerful public CbCR regime contemplated by any major jurisdiction to date. As final legislation has yet to be introduced, however, there is still a chance that the government will make further changes to the measure. The government's explanatory memorandum outlining the current proposal left the door open for "further consultation with industry" before legislation is finalized, reflecting opposition from some multinational groups and their allies to the transparency package. These detractors include the American and Australian Chambers of Commerce, major multinational associations like France's MEDEF and SwissHoldings, and the Big Four accounting firms, including the embattled PwC.

If you've seen PwC in the news recently, it was likely in relation to the firm's ongoing tax scandal, which came to light in January and implicated the PwC's Australian branch in the misuse of confidential government information to help its clients (including Google and others) dodge new tax enforcement measures. Coincidentally, in its comment on Australia's public CbCR legislation, PwC expressed "significant concerns relating to confidential and legally prohibited information being published" and argued that publication of its clients' tax data would lead to "misinterpretation" of their activities and tax structures.

Following the legislation's delay, the Financial Times reported that the OECD had also pressured Australian officials against public CbCR. Shortly after the story broke, OECD Secretary General Matthias Cormann published a statement denying allegations that officials had directly argued

against the proposed Australian law, though he acknowledged that "OECD experts raised a number of technical issues" with the proposal, including that the measure would have risked Australia being cut off from intergovernmental exchange of country by country reports under the OECD's confidential reporting standard.

In his statement, Cormann also noted that "the Australian government has decided to continue to engage with stakeholders on this bill to build on refinements it has already announced in order to align it more closely with the European Union's public country-by-country reporting regime."

Such alignment with the EU directive, beyond those measures already introduced in the bill's most recent implementation outline, is neither practical nor desirable. The pattern of industry feedback from multiple rounds of consultation on Australia's public CbCR commitment is clear: many large multinationals and those that represent them want to weaken the bill, seeking to:

1. Introduce massive carve-outs that would introduce optionality in reporting;
2. Limit the scope of the proposal to only cover Australia and (possibly) a limited number of other "non-cooperative" jurisdictions, and;
3. Narrow the categories of information required in reporting.

In other words, certain multinational corporations will only accept "public country-by-country reporting" so long as it is as private as possible and limited to a single country.

In particular, any potential limitations on the jurisdictional scope of the proposal would be unacceptable. As Tax Justice Network Australia and the Centre for International Corporate Tax Accountability and Research (CICTAR) note in a recent comment: "While the geographic scope of the EU CbCR directive is deeply flawed in the European context, it is absurd to apply this concept to Australia…The primary purpose of public CbCR reporting is to expose where profits are shifted, reporting on data in only Australia would fail to meet this primary purpose."

We already know that global reporting is possible: a number of major multinationals, including Shell, British Petroleum, BHP, and Rio Tinto already produce country-by-country reports in line with the GRI standard. Those firms clearly see value in collecting and producing this data, and provide evidence that compliance costs – while not necessarily insignificant – are not a major impediment to public reporting.

It is not yet clear what form Australia's announced "future consultation" with stakeholders will take, but it is imperative that a strong standard of transparency is applied to the consultation process. Future consultations should be inclusive, allowing civil society, labor, and responsible investment groups supportive of public CbCR to have their voices heard, and should be conducted via established, public processes. **Ultimately, however, the government should stand by its election commitment to full multinational tax transparency.** By doing so, Australia would overnight usher in a new era of accountability and transparency in the world of international tax, and establish itself as a global leader in the fight against tax avoidance.

FASB's Income Tax Proposal: A Dramatic Improvement for U.S. Tax Transparency

Meanwhile, the U.S. accounting standard-setter, the Financial Accounting Standards Board (FASB), has for years been exploring options to require greater disclosures of tax information from public companies. While progress has been slow, in August FASB unanimously approved improvements to income tax disclosures, based on a draft released in March.

The proposal's most consequential measure will require public companies to provide additional information on tax effects that have a substantial impact on their overall tax burden: including, importantly, a jurisdiction-by-jurisdiction breakdown of foreign tax effects that meet a particular threshold. What this means, in practice, is that public companies with complex multinational structures will have to show, in raw numbers, the impact that certain elements of their foreign operations have on net taxes paid.

For example, if a given U.S.-based multinational primarily conducts business domestically and in a limited set of other major market jurisdictions (say, France and the United Kingdom), but books the majority of its profits in a tax haven jurisdiction, like Bermuda, that multinational would likely have to publish the total financial impact of its arrangements in Bermuda (broken down by each major effect, such as tax rate differential, tax credits and incentives, etc.) on its total taxes paid, provided certain thresholds are met. The proposal also requires both public and private companies to disclose their income taxes paid in each jurisdiction that constitutes at least 5 percent of their total tax burden.

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If this standard sounds more granular, complicated, and limited than Australia's public CbCR proposal, it's because it is. FASB's enhanced disclosures are intended to be used only by investors seeking additional information about material tax-related risks associated with individual companies, whereas Australia's proposal serves not only the needs of investors, but also legislators and other actors interested in cracking down on broad patterns of multinational tax avoidance.

Despite the clear differences in both substance and intention between FASB's proposal and true public CbCR, some big business groups have expressed strong opposition to the measure. In its response to the latest draft proposal, the U.S. Chamber of Commerce argued that "Demands for increased income tax disclosures that derive from a politically driven narrative—namely, that corporations do not "pay their fair share"—are neither based on an investor mandate nor in the best interests of investors generally."

As an independent, nongovernmental body of accounting experts, FASB is hardly beholden to some "politically driven narrative." Furthermore, many investors would disagree with the Chamber on the subject of their own "best interests." The latest exposure draft of FASB's proposal was supported by a number of major institutional investors, including Norges Bank Investment Management and Principles for Responsible Investment. A handout presented ahead of FASB's recent deliberations on the revised standard notes that **"The Board and the staff met with 54 investors… since 2020 to understand their requests for more transparent income tax information in the financial statements. Investors broadly supported the project and the proposed Update."** Furthermore, Oxfam America released new statistics in May 2023 demonstrating the support of investors with over $10 trillion in assets under management for public CbCR, and a wave of shareholder resolutions filed against major U.S. multinationals in both 2022 and 2023 calling for enhanced international tax transparency garnered strong support.

FASB's proposal neither constitutes, nor is a replacement for, true public CbCR. The two measures serve different purposes, are intended for different audiences, and provide different data sets to different end users. This fact is not to be mistaken for criticism: the enhanced

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disclosures contained in FASB's revised standard represent a huge step forward for investors seeking more information on the tax practices and exposures of companies in their portfolios. These disclosures would still, however, be further complemented by full public CbCR, which FASB is not itself in a position to mandate. That authority, instead, lies with the Securities and Exchange Commission.

The Need for Further U.S. Action

The SEC has an obligation to protect investors, including through disclosure requirements for public companies. Under current rules, multinationals are required only to disclose information on their offshore tax obligations in aggregate, with little-to-no information publicly available on their international tax structures. This information is material to investors, as demonstrated in numerous multi-billion dollar tax cases, including an ongoing profit-shifting case that may result in up to $14 billion in additional tax and interest liability for Coca-Cola.

With both the EU and Australia's public CbCR regimes set to enter in effect in the coming years, the SEC has a responsibility to harmonize standards for large American filers, many of which will already be captured by one or more of these nascent international regimes. It is in the best interest of investors, the public, and major US-listed multinationals not to allow a situation to develop in which firms with European and Australian operations are subjected to more stringent disclosure requirements than those without. Information asymmetry leads to market inefficiencies, and must be minimized through a harmonized public tax reporting standard. That standard should, per the SEC's mandate, prioritize the interests of investors and the public, rather than the preferences of major multinationals, as unfortunately has proven the case in the EU. Australia's strong proposal, based on the GRI standard, should serve as a model in this regard.

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As with Australia's efforts to introduce full public CbCR, the common arguments against transparency vanish under scrutiny. The voluntary adoption of the GRI standard by a number of the world's largest firms demonstrates that comprehensive public CbCR is not only manageable for major multinationals, but can be beneficial by allowing firms to proactively share their tax narratives with policymakers and the public. Public reporting also gives businesses the opportunity to demonstrate that their profits are built on genuine competitive advantages, rather than on unsustainable—if not outright illegal—tax practices. In this way, transparency may actually help firms draw investment.

Markets will also be protected from unintended regulatory effects if policymakers have the information necessary to craft laws that adequately address multinational tax avoidance while protecting legitimate business arrangements. In the U.S. alone, the last few years have seen the enactment of a Global Intangible Low-Taxed Income (GILTI) tax, the Base Erosion and Anti-abuse Tax (BEAT), and Corporate Alternative Minimum Tax (CAMT) to attempt to shore up revenues in the face of widespread multinational tax avoidance. Internationally, 138 countries have agreed on a two-pillar global tax deal, which is currently in the process of being implemented. Without consistent and comparable public data, lawmakers and advocates are left unable to assess the efficacy of these tax enforcement efforts.

Congress has already signaled its interest in SEC action on public CbCR. The recently-reintroduced Disclosure of Tax Havens and Offshoring Act passed the House last Congress, and would require the SEC to implement public CbCR. Even without a congressional mandate, however, the SEC has clear authority to act on its own to require public CbCR under sections 12(b) and 13(b) of the Securities Exchange Act.

International momentum for greater tax transparency is not slowing down. Without decisive U.S. action, businesses will face conflicting reporting obligations, market-distorting information asymmetries will continue to accumulate, and investors will be left blind with regards to major tax risks to their portfolios.