



June 28, 2024

**To:** Australian Senate, Economics Legislation Committee

**Submitted electronically** via [seniorclerk.committees.sen@aph.gov.au](mailto:seniorclerk.committees.sen@aph.gov.au)

**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]

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 (Responsible Buy Now Pay Later and Other Measures) Bill 2024 and Capital Works (Build to Rent Misuse Tax) Bill 2024. This letter specifically provides comments on **Schedule 4 – Multinational tax transparency – country by country reporting** (hereafter, Schedule 4) contained within Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024.

**FACT welcomes the introduction of legislation implementing Australia’s public country-by-country reporting (CbCR) regime, and recommends that Parliament swiftly pass this legislation without further changes to Schedule 4.**

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 by multinational entities.<sup>1</sup> FACT is a leading voice for multinational tax transparency<sup>2</sup> and has worked alongside policy-makers, investors, standard-setting bodies, and international advocates to advance public country-by-country reporting measures globally.

FACT’s previous comment submissions on Australia’s proposed public CbCR regime can be found below:

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<sup>1</sup> 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/>.

<sup>2</sup> See FACT Coalition, “A Material Concern: The Investor Case for Public Country-by-Country Tax Reporting,” July 2022, <https://thefactcoalition.org/report/a-material-concern-the-investor-case-for-public-country-by-country-tax-reporting/#:~:text=FAC%20Ts%20latest%20report%2C%20%E2%80%9CA%20Material.increasingly%20apparent%20usefulness%20to%20investors.>

- *March 4, 2024*: Comments on the Treasury’s consultation on Public Country-by-Country Reporting – February 2024<sup>3</sup>
- *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 2023<sup>4</sup>
- *April 28, 2023*: Comments on the Treasury’s consultation on Draft Amendments Regarding Public Country-by-Country Reporting - April 2023.<sup>5</sup>

## **Schedule 4—Multinational Tax Transparency—Public Country by Country Reporting**

### ***Information required to be reported, and exemptions for reporting entities***

FACT applauds the government’s decision to advance a public CbCR regime based on the world-leading Global Reporting Initiative (GRI) 207-4 standard. In its Explanatory Memorandum, the government rightly notes that, “While there is significant overlap in the required data disclosures between the OECD confidential CBC reporting, the EU Directive 2021/2101, and the GRI 207, the GRI 207 provides for a broader set of disclosures, consistent with the intended policy outcome.”<sup>6</sup>

**The broader set of disclosures required under GRI 207-4, as compared to the EU Directive, includes information that is critical to an end user’s understanding of a given multinational’s tax structure**, including revenues disaggregated into related and third-party buckets (defined in the legislation as “revenue from unrelated parties” and “revenue from related parties that are not tax residents of the jurisdiction”), the book value of tangible assets, and a qualitative reconciliation of actual income tax accrued and the income tax that would be accrued at the jurisdiction’s statutory rate. **The improvement represented by these broader disclosures for end users cannot be overstated**, particularly given that similar information reported by a given multinational under the EU Directive may be otherwise compromised through elective reporting exemptions (i.e., the EU Directive’s “safeguard clause”, which gives a reporting entity broad latitude to defer reporting certain information for most covered jurisdictions for up to five years if that information is deemed by the entity to be “commercially sensitive”).

<sup>3</sup> FACT Coalition, “Re: Consultation on Draft Amendments Regarding Public Country-by-Country Reporting,” March 4, 2024, <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>.

<sup>4</sup> 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](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).

<sup>5</sup> 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](https://thefactcoalition.org/wp-content/uploads/2023/04/FACT-Coalition_-_AU-Public-Country-By-Country-Reporting-Comment.pdf).

<sup>6</sup> Para 4.8, Explanatory Memorandum, “Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024,” [https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7199\\_ems\\_68bf69beca1-4eb1-be21-83f568e443af%22](https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7199_ems_68bf69beca1-4eb1-be21-83f568e443af%22).

FACT further agrees with the government’s decision to use GRI 207 “as the primary source of guidance in interpreting the requirements entities must publish under these amendments...” and subsequent clarification that, “Where relevant, the disclosures are intended to align with the meaning of those in the GRI 207, even where the terminology is not identical.”<sup>7</sup> Such consistency is essential to effective compliance by covered entities, though FACT also appreciates the government’s allowance of reference to the OECD’s BEPS Action 13 and related guidance in limited circumstances “where they provide greater detail on the interpretation of particular terms.”<sup>8</sup>

With regard to exemptions, the approach outlined in paragraphs 3DB(5) and 3DB(6) – in which the Commissioner may specify specific entities that are exempt from reporting, or otherwise exempt from reporting specific information – represents an improvement on the overly-broad and elective exemptions contained within the EU Directive. FACT agrees with the proposed limitation that such exemptions may only be issued for a single reporting period per notice. As FACT has previously noted in its comments on the government’s proposed public CbCR regime, the authority contemplated in paragraph 3DB(4) allowing the Commissioner to designate an entire entity class that is exempt from reporting requirements by legislative instrument should only be exercised in extremely limited circumstances.

FACT appreciates the government’s acknowledgement that “In exercising these discretions, it is expected the Commissioner would have regard to the primary purpose of the amendments which is to enhance tax transparency.”<sup>9</sup> In considering exemption requests, however, it is important to distinguish between the specific circumstances contemplated in the Explanatory Memorandum. It may be entirely appropriate, for example, to grant an exemption for information that could impact national security or result in a breach of Australian or foreign law.

It is more difficult to contemplate, however, a common circumstance under which information required under Schedule 4 could be deemed sufficiently “commercially sensitive” to qualify for an exemption, given the high-level nature of CbC data. If an entity were to argue that it would suffer negative market ramifications due to the publication of a high-level description of its activities in a given jurisdiction determined by the Minister to pose significant profit shifting and

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<sup>7</sup> Para 4.38, Explanatory Memorandum, “Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024,”

[https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7199\\_ems\\_68bf69be-dca1-4eb1-be21-83f568e443af%22](https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7199_ems_68bf69be-dca1-4eb1-be21-83f568e443af%22).

<sup>8</sup> Para 4.39, Explanatory Memorandum, “Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024,”

[https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7199\\_ems\\_68bf69be-dca1-4eb1-be21-83f568e443af%22](https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7199_ems_68bf69be-dca1-4eb1-be21-83f568e443af%22).

<sup>9</sup> Para 4.23, Explanatory Memorandum, “Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024,”

[https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7199\\_ems\\_68bf69be-dca1-4eb1-be21-83f568e443af%22](https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7199_ems_68bf69be-dca1-4eb1-be21-83f568e443af%22).

base erosion risks, then the publication of that information would, by definition, be entirely appropriate given the government's stated policy outcome of enhanced tax transparency.

***The Minister's determination of covered jurisdictions for purposes of disaggregated reporting***

It is also critical that the government does not repeat other mistakes made during the drafting of the final EU Directive, which, in addition to the aforementioned safeguard clause, strictly prescribes which non-EU jurisdictions disaggregated reporting can be required for. **The latitude provided to the Minister under subsection 3DA(4) is both appropriate with regard to the government's intended policy outcome and necessary in order to allow reporting requirements under the measure to adjust quickly to emerging trends in international taxation.** This is particularly important as certain jurisdictions that have historically functioned as tax havens may be exploring novel tax incentives in order to remain competitive while complying with the OECD/G20 15 percent global minimum tax.

In making their initial determination regarding covered jurisdictions, the Minister should consider both those jurisdictions that pose a substantial profit shifting and base erosion risk in a global context, as well as the advantages provided by the broader set of disclosures required under the Australian reporting regime relative to the EU Directive. While the Minister's draft determination, released in March 2024, omitted four EU member states otherwise included on the Australian Taxation Office's list of *Specified Countries or Jurisdictions*<sup>10</sup> on the basis that such overlap would result in duplicative reporting requirements, it is important to note that not every multinational entity covered under Australia's public CbCR regime will also be covered under the EU Directive. Such an entity would therefore not be required to report on their operations in certain EU member states that have been long recognized as tax planning hubs, including Cyprus, Luxembourg, and Ireland, despite the materiality of such information to end users. Requiring reporting on these jurisdictions, regardless of their inclusion in the EU Directive, would also provide additional data points for end users consistent with the categories of information required under GRI 207-4, as mentioned above.

While FACT acknowledges the government's interest in crafting a list that is "intended to complement the EU Directive 2021/2101 to support the policy intent of meaningful improvements to global multinational tax transparency,"<sup>11</sup> it is important that the Australian CbCR regime be able to stand on its own, independent of potential developments surrounding any other comparable regime. As such, **the Minister's initial determination should include all**

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<sup>10</sup> Australian Tax Office, "Appendix 1: Specified countries or jurisdictions names and codes," last updated July 2, 2023, <https://www.ato.gov.au/forms-and-instructions/international-dealings-schedule-2023-instructions/appendixes/appendix-1-specified-countries-or-jurisdictions-names-and-codes>.

<sup>11</sup> Para 4.32, Explanatory Memorandum, "Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024," [https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7199\\_ems\\_68bf69be-dca1-4eb1-be21-83f568e443af%22](https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7199_ems_68bf69be-dca1-4eb1-be21-83f568e443af%22).

**jurisdictions on the ATO's list of *Specified Countries or Jurisdictions*, regardless of whether those jurisdictions would otherwise be covered under the EU Directive, as well as any additional jurisdictions the Minister considers necessary given emerging developments. As FACT has argued in previous comments, **the Minister should also strongly consider including Puerto Rico in their initial determination**, given the central role that the territory plays in the tax strategies of numerous large U.S.-based multinationals.**

### ***Conclusion***

Parliament should not delay advancing this world-leading measure to shed light on the tax practices of major multinational corporations. As introduced, Australia's public CbCR regime would provide government decision makers, investors, watchdog groups, journalists, and other stakeholders with much-needed new information, setting a new global standard for tax transparency. **FACT urges the Senate to introduce and pass the Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024 without further changes to Schedule 4.**

FACT is grateful for the opportunity to comment, and remains available for further discussion and input. Please contact Zorka Milin at [zmilin@thefactcoalition](mailto:zmilin@thefactcoalition) with any questions or comments.

Respectfully submitted,

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