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RE: Taxation Laws Amendment (Measures for Future Bills) Bill 2023: Multinational Tax Transparency – Tax Changes

The Australian Chamber of Commerce and Industry (ACCI) appreciates the opportunity to comment on the exposure draft of the Taxation Laws Amendment (Measures for Future Bills) Bill 2023: Multinational Tax Transparency – Tax Changes (the Bill).

ACCI is Australia's largest and most representative business association. Our members are all state and territory chambers of commerce, which in turn have 430 local chambers as members, as well as over 70 national industry associations. Together, we represent Australian businesses of all shapes and sizes, across all sectors of the economy, and from every corner of our country.

We commend the Australian government's commitment to the Organisation for Economic Cooperation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) project and the introduction of the Country-by-Country Reporting (CbCR) requirements set out in BEPS Action Item 13. Greater transparency of financial and taxation information is needed to ensure multinational enterprises (MNEs) pay a fair share of tax relative to their activity in Australia, thereby providing a more level playing field for Australian businesses.

ACCI supports the intent of the Bill to introduce new CbCR disclosure requirements to improve corporate tax transparency for MNEs operating in Australia. However, as a global framework, it is important that the CbCR in Australia is consistent with the requirements in other jurisdictions. The Bill diverts from the international standard requirements through additional data disclosures and lack of safeguards for commercially sensitive data, as well as the need to consider the overlap with the OECD Pillar Two framework. These are discussed further below.

Additional Data Disclosure

The explanatory memorandum notes that the CbCR requirements are predominantly adopted from the disclosure items that form part of the OECD recommendation for CbCR and the Global Reporting Initiative (GRI-207) requirements. However, the reporting requirements in the Bill include three additional disclosures on: effective tax rates (ETRs); expenses from related party transactions; and details on intangible assets. While the explanatory memorandum notes that these three items were added to enhance the CbCR, it does not provide sufficient explanation to support their inclusion.

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The lack of consistency with the reporting requirements in other jurisdictions will lead to a substantial additional compliance burden for MNEs operating in Australia as their reporting systems will be designed to be consistent with the OECD standard or GRI-207. Further, the additional Australia-specific information is also likely to result in confusion and the risk misreporting of information due to the different data points and methodologies required to generate this data.

It is important that the Australian CbCR requirements set out in the Bill are consistent with the international standards and the reporting requirements of other jurisdictions where the MNEs operate. As it stands, the Bill will require MNEs operating in Australia to develop separate databases for collecting and preparing the required information for Australia and then have this information audited. The Australian CbCR should not involve an additional administrative and compliance burden that may discourage MNEs from operating and investing in Australia. The three additional data disclosures should be removed, at least in the initial stages of reporting, and only be considered for inclusion at later stages. This should only occur if they are adopted in the OECD standard or the reporting requirements in other major jurisdictions, such as the EU CbCR. This would avoid the requirement for a unique database and reporting system for Australia.

Administrative Burden

The Bill will significantly increase compliance for companies doing business in Australia, imposing significant administrative and resource challenges that will put Australian companies at a competitive disadvantage. The additional data disclosure in the Australian CbCR will require additional personnel across accounting, tax, legal, and other teams to prepare the financial and tax data on a jurisdictional basis. The cost of which will be diverted away from capital investment as well as research and development which would otherwise generate economic growth.

Materiality threshold for jurisdictional reporting

The bill requires MNEs to disclose financial/tax data on all jurisdictions in which it operates. This compares with other jurisdictions, such as the EU CbCR, which limits disclosure to the largest jurisdictions based on a percent of global revenue, profits, and/or employees, then aggregates the remainder into a 'rest of world' figure. Like the EU CbCR, MNEs should be required to also disclose disaggregated data for low-tax jurisdictions or tax havens. This approach will ensure a more reasonable administrative burden for taxpayers. There is a diminishing value in requesting taxpayers to generate the financial and tax data for all jurisdictions.

Safeguards for sensitive data

The Bill requires the CbCR information be provided to the government for publication on the Treasury website. While ACCI supports the transparency of the CbCR, we are concerned about the lack of safeguards for confidential and commercially sensitive information.

BEPS Action Item 13 recognises the risk the CbCR requires companies to provide potentially confidential and commercially sensitive information to tax authorities, so allows exemptions in certain circumstances.

While the Bill does reference exemptions, it appears to be at the discretion of the Tax Commissioner. More clarity on how a MNE would apply, and qualify, for an exemption from the publication of confidential and commercially sensitive information is needed.

Overlap with the OECD Pillar Two Framework

The Bill appears to have been drafted without consideration of the overlap with the OECD Inclusive Framework Pillar Two implementation timelines. Under Pillar Two, MNEs subject to CbCR are required to pay an effective tax rate (ETR) at a minimum of 15 per cent on their activities in each jurisdiction in which they operate.

The Bill requires MNEs to commence CbCR, including disclosing their ETR, for the 2023/24 income year within 12 months. This represents an acceleration when compared against the proposed OECD Pillar Two framework filing deadlines, which do not require MNEs to report their ETR under Pillar Two before 2024. In comparison, while the European Union member states have until June 22, 2023, to transpose the EU public CbCR Directive into domestic legislation, the commencement date for compliance is the first financial year starting on or after June 22, 2024.

Requiring the ETR to be reported earlier in Australia than for all other jurisdictions in which a MNE operates will create a considerable administrative and compliance burden. It could also lead to incorrect ETR disclosure, as it will not be able consider the impact of any top-up taxes or qualified domestic minimum taxes in other jurisdictions, paid in accordance with Pillar Two. Without these adjustments, the ETR reported in the Australian CbCR data will not appropriately represent the actual ETR applying to the MNE. If ETR is included in the CbCR, then the timing of its introduction should be delayed to align with the ETR reporting requirements under the OECD Pillar Two framework.

Further, it is unclear how the Bill aligns with the safe harbour rules included in the OECD Pillar Two Framework. The safe harbour rules are designed to limit the immediate compliance difficulties MNEs face in building systems to collect the data needed for undertaking full Pillar Two calculations. The rules limit the circumstances in which an MNE is required to undertake such calculations to a smaller number of higher-risk jurisdictions. The safe harbour rules apply if an MNE can demonstrate, based on its qualifying CbCR and financial accounting data, that in a jurisdiction it meets one of the following tests: its revenue and income are below the de minimis threshold (the de minimis test); its ETR equals or exceeds an agreed rate (the ETR test) or it generated no excess profits after excluding routine profits (the routine profits test). The Bill makes no reference to the transitional safe harbour measures or exemptions for business under the de minimis, ETR or routine profits tests. It is important that the safe harbour rules are included, particularly for the ETR calculation to assist MNEs in transitioning to the new reporting requirements.

Yours sincerely

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