28 June 2024

Dr Sean Turner
Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: economics.sen@aph.gov.au

Dear Dr Turner

Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024

The Australian Financial Markets Association (**AFMA**) represents the interests of over 130 participants in Australia's financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. AFMA's members are the major providers of wholesale banking and financial market services to Australian businesses and investors.

We are pleased to lodge a submission to the Committee in relation to the provisions contained in the Schedule 4 of the *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024* (**the Bill**)**,** together with comments included in the accompanying Explanatory Memorandum, relating to Public Country-by-Country Reporting.

Executive Summary

AFMA recommends that:

- The Australian reporting requirements in relation to Public CbC information align completely with EU Directive 2021/2101, both in terms of timing the information to be reported and the timing of reporting;
- In aligning the reporting requirements to the EU Directive, it is particularly important that no qualitative information should be required to be reported;
- The Government should not proceed with the proposed disclosure of revenues from related parties that are not tax residents of the jurisdiction; and
- The list of jurisdictions to be reported on a non-aggregated basis be aligned completely with the EU list, as that list is updated from time to time.

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AFMA Policy Position

AFMA has engaged extensively with Treasury throughout the consultation to give effect to the Government's commitment to release CbC information publicly. We acknowledge the constructive outcome of this engagement in relation to a number of points, as reflected in the Bill. These include deferral of commencement to income years starting on or after 1 July 2024 and the inclusion of a *de minimis* exemption for those Significant Global Entities (**SGEs**) that have an immaterial presence in Australia.

AFMA remains concerned, however, that the approach for disclosure remains aligned to those set out in GRI 207, a voluntary standard. AFMA remains of the view that this approach will give rise to a duplication of compliance costs, due to many SGEs being required to disclose under a distinct reporting obligation in the European Union, either under EU Directive 2021/2101 or otherwise.

The proposed Australian approach specifically acknowledges that many SGEs that will be reporting under the Australian requirements will also be reporting under the EU Directive. For example, in the draft Explanatory Memorandum at 4.41, it is stated that "where a CBC reporting group has prepared a report under the EU Directive 2021/2101, they are expected to publish a link to, or copy of, this report when publishing the tax information required by these amendments."

The disclosures to be made publicly under the proposed Australian requirements do not align to those under EU Directive 2021/2101. Differences, such as approach to tax, reasons for the difference between income tax expense and the statutory rate applied to profit (for non-aggregated jurisdictions) and the requirement to separately disclose related party revenue mean that SGEs that report under both disclosure regimes will need to tailor the compliance approach to each regime, thereby exacerbating the compliance burden for no real benefit in terms of transparency or comparability.

Given the acknowledgement by the Government in the Exposure Draft that the Australian approach is predicated on the fact that many SGEs in Australia will report also under an EU Directive, AFMA reiterates that its preferred policy position is to align the Australian disclosure requirements entirely to the EU requirements under Directive 2021/2101.

In relation to the proposed disclosure of revenue from related parties that are not tax residents of the jurisdiction, our preferred policy position in relation to related party revenue disclosure is alignment with both the OECD and EU requirements, namely to disclose revenue from related parties regardless of jurisdiction.

Issues with Disclosure Methodology and Approach

The non-alignment between the Australian reporting requirements and those in the EU Directive largely relate to qualitative, as opposed to quantitative information, particularly:

- Approach to tax; and
- Reasons for differences between income tax expense and profit multiplied by corporate tax rate for non-aggregated jurisdictions.

Given the proposed publication approach is that the information will be provided by the reporting entity to the Commissioner "in the approved form" before being disclosed on an Australian Government website, it is unclear to AFMA how qualitative information could be disclosed in this way. AFMA notes that this issue would not arise should the reporting requirements be aligned to EU Directive 2021/2101.

In relation to disclosure, we note that the legislation requires the CbC parent to submit the required information to the ATO. AFMA supports the ability of the CbC parent to delegate this responsibility to another entity.

List of Non-Aggregated Jurisdictions

Under the proposed approach as set out in the Exposure Draft, reporting entities can disclose the required information on an aggregated basis, with the exception of Australia and jurisdictions specifically articulated in the Minister's Determination. This list of jurisdictions is unclear; however the Explanatory Memorandum suggests that the list of non-aggregated jurisdictions is proposed to mirror the specified jurisdictions for the purposes of the International Dealings Schedule.

AFMA remains concerned with this approach, given that the list of specified jurisdictions differs materially to the corresponding list that the EU requires to be disclosed on a non-aggregated basis. Broadly, the EU list is sourced from the jurisdictions that the EU has placed on the grey-list or black-list for non-cooperative jurisdictions. These lists are compiled with significant rigour, with the EU willing, where appropriate, to remove jurisdictions from the list where such jurisdictions evidence co-operation in terms of transparency and information exchange. A recent example of a jurisdiction being removed from an EU list was Hong Kong, which was removed in January 2024 for updating its Foreign Sourced Income Exemption regime such that it no longer qualifies as a harmful tax practice. The enhanced robustness of Hong Kong's tax regime should also be reflected in Australia's reporting requirements.

The preferable path is again to align the Australian list of non-aggregated jurisdictions to the EU black and grey-lists to ensure that the list is contemporaneous, reflects recent developments and is internationally consistent. This will be particularly important as more jurisdictions sign up to the common Reporting Standard and/or implement a domestic minimum tax to align with the OECD Pillar 2 initiative, which may result in their removal from the EU list.

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Thank you for the opportunity to provide a submission for the Committee's consideration. Please contact me on [redacted] or at [redacted] to discuss any of the matters that we have raised in this submission.

Yours sincerely,

[redacted]

Rob Colquhoun
Head of Tax