sifma
asset management group

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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

Re: Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024 - Public Country-by-Country Reporting

SIFMA's Asset Management Group (SIFMA AMG) brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms – both independent and broker-dealer affiliated – whose combined assets under management exceed $62 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

The international asset management industry strongly values the Australian capital markets. Market capitalization in Australia was almost $2 trillion in 2023, a four-fold increase since the turn of the century. Our members aspire to continue to be a part of that market growth and the employment and investment that it underpins. Financial Services account for 13 percent of all Foreign Direct Investment into Australia, above the share accounted for by manufacturing and second only to Real Estate. The United States alone accounts for around 40 percent of foreign equity investment into Australia.

Country-by-Country Reporting

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,* specifically conveying our perspective regarding the accompanying Explanatory Memorandum, relating to Public Country-by-

Country Reporting (CbCR). This feedback follows letters we sent to the Australian Treasury department on March 5th, 2024, and July 21st, 2023, focused on the key principles for proportionate and meaningful CbCR. An inclusive process remains crucial at every key stage in designing and implementing such a regime. Thus, we appreciate that the committee has agreed to accept submissions until 28 June 2024**,** noting its intention to seek an extension of the reporting date.

We are benchmarking the proposals against the core principles we previously set out to evaluate '*whether the…..legislation and explanatory materials appropriately reflect and give effect to the policy intent of improving tax transparency.*' **Our key concern is that this legislation continues to diverge from international norms and in ways that do not address the policy intent of improving tax transparency and yet would diminish the international competitiveness of Australia to cross-border investors.**

We specifically request that the final legislative package include the following refinements:

1. The specified jurisdiction list should align with the European Union (EU) Directive and the methodology for how the jurisdiction list is developed should be transparent.
2. The Australian Tax Office discretionary exemption period should be expanded.
3. The legislation should include protection for commercially sensitive information *or* add a comply or explain provision.
4. It should remove qualitative disclosure, such as articulation of the group's strategy and approach to tax.
5. There should be a relaxation of the requirements that the public CbCR data should be sourced from consolidated FS (top-down approach) and allow data to be sourced from entity's FS (bottom-up approach).

International consistency

As we set out in our previous submissions, it is crucial that Australia adheres to international norms. This is especially true when other jurisdictions, particularly the EU, has designed its own approach to CbCR 'to combine openness on company accounts and the level of taxes actually paid with *the need to safeguard the competitiveness of EU businesses'*. To put these considerations in context, the World Economic Forum (WEF) ranked Australia 13th in the 2024 World Competitiveness League Tables, yet 29th in terms of the competitiveness of its taxation regime.

Moreover, the International Tax Competitiveness Index (ITCI) is published annually and seeks to measure whether a country's tax system is neutral and competitive and highlights the risks to Australia's economy. To undertake a comprehensive assessment, the ITCI looks at more than 40 tax policy variables. These variables measure not only the level of tax rates, but also how taxes are *structured.* While Australia ranks tenth overall in this index, its performance is notably weaker on how it approaches cross-border taxation (ranked 21st) and corporate tax (ranked 32nd).

We have two concerns relative to international practice and Australian competitiveness. First with the nature of some of the information in scope and second with the 'top down' nature of the corporate information that is required to be shared.

(i) Scope

Despite refinements, and the stated purpose of better aligning Australia with the EU, the Australian regime set out in the legislation is still not sufficiently aligned with international norms and, consequently, would expose highly confidential commercial data. The proposed CbCR regime has extensive cross-jurisdictional reach. It would require reporting the information of a non-Australian parent merely because the parent has established an Australian subsidiary. Although we do not object to reporting this information on a confidential basis, reporting publicly could compromise the competitive position of parent companies, which would disincentivize firms from doing business in Australia to the detriment of investors and its own international competitiveness. So, to better align the scope of the regime with its goals the final legislation should clearly remove qualitative disclosure such as, for example, articulation of the group's strategy and approach to tax.

It is critical for the Australian Government to understand that Multinational Enterprises (MNSs) can be fully compliant as taxpayers but still need to keep commercially sensitive information private. Desire to keep sensitive information private is not a reflection of the taxpaying status of an MNE – merely a desire to maintain commercial secrets from competitors.

To avoid harmful competitive impacts, Australia should consider building in protections for confidential data. A safeguard clause that would protect the competitive position of firms operating in Australia would also allow the regime to operate while having a neutral impact on Australia's international competitiveness – it would mean aligning Australia with other jurisdictions and remaining within the spirit of global tax transparency efforts by allowing commercially sensitive information to remain confidential. For example, the EU has 'comply or explain' provisions and other measures to protect commercially sensitive information. If the EU comply or explain standard isn't sufficiently stringent, Australia could offer a different confidentiality process whereby an entity could publicly report redacted information and supply the Australian government with an unredacted version and explain why the redactions are necessary. This would allow for dialogue between the government and company and would ensure a review mechanism. Such an approach would be consistent with other transparency initiatives such as the Global Reporting Initiative Sustainability Reporting Standards. Those standards permit firms to provide reasons for omitting disclosures and requirements that the organization cannot comply with. One key rationale recognized in the foundations of such standards are confidentiality constraints.

It is strongly welcomed that small Australian business will be exempt from public CbCR requirements. However, other exemptions which the Commissioner may provide - if the information to be provided is commercially sensitive, relates to national security, or national or international law would be breached by making the information public – will

apply for only a single reporting period. This relief should be expanded beyond such a narrow time frame.

(ii) Top-down versus bottom-up approaches

The second divergence with the EU is that Australia would require an MNE to source information from its consolidated financial statements (a top-down approach) rather than from its entity financial statements (a bottom-up approach). This is also inconsistent with data sourcing rules for other CbCR regimes, thereby adding considerable administrative duplication for no obvious policy gain.

In the legislation, the covered entity must publish amounts as shown in the audited consolidated financial statements for the entity for the reporting period. By contrast, the EU allows the reporting MNE may choose to use data from its consolidation reporting packages, from separate entity statutory financial statements, regulatory financial statements, or internal management accounts.

It is not necessary to reconcile the revenue, profit, and tax reporting in the template to the Consolidated Financial Statements. If statutory financial statements are used as the basis for reporting, all amounts shall be translated to the stated functional currency of the reporting MNE at the average exchange rate for the year stated in the 'Additional information' section of the template. Adjustments need not be made, however, for differences in accounting principles applied from tax jurisdiction to tax jurisdiction.

Goal

Country-by-Country tax reporting is about tax transparency. The financial services industry is already a significant payer of tax revenue in Australia (see below). Rather than being the purpose of CbCR tax reporting, it is the OECD's Pillar Two model rules that aim to address the tax challenges arising from digitalization and globalization by establishing a global minimum corporate tax rate set at 15 percent. Australia is one of the 137 signatories to this agreement. Moreover, the OECD has warned that, as previously proposed, Australia's CbCR reporting would risk potentially '*undermining and weakening*' efforts to tackle tax avoidance in certain parts of the global economy.

Approach to the financial sector

In terms of scope, the OECD has also highlighted the unique circumstances of financial services from the perspective of global taxation. Due to capital adequacy requirements, the Regulated Financial Services Exclusion provision omits the revenues and profits from Regulated Financial Institutions that reflect the risks taken on and borne by the firm. The OECD BEPS exclusion for Regulated Financial Institutions is relevant and should be applicable for Australia's CbCR regime, given the industry's reduced ability to engage in profit shifting and tax practices that the Australian government seeks to expose.

As signaled above, the financial services industry is already a significant payer of tax revenue in Australia; The Australian Banking Association estimated that banks and capital markets account for 60 percent of the tax paid by the ASX 200 industries. Many

Multinational Enterprises (MNEs) domiciled outside of Australia already publicly disclose corporate tax paid in Australia.

Process

We welcome the continued consultative approach to CbC reporting in Australia. As the OECD has stated:

> '*Dialogue between governments and business is a critical aspect of ensuring that CbC reporting is implemented consistently across the globe. Consistent implementation will not only ensure a level playing field, but also provide certainty for taxpayers and improve the ability of tax administrations to use CbC reports in their risk assessment work'*.

Conclusion

SIFMA AMG are grateful for the opportunity to comment further on Australia's approach to CbCR. Given the transnational nature of the framework, ensuring that Australia's regime is proportionate and consistent with maintaining international competitiveness are significant factors that should be carefully considered before finalizing this legislation. We would welcome the opportunity to liaise further with you, alongside our members with investments in Australia.

Sincerely,

Peter Matheson
Managing Director, International Policy & Engagement