



28 June 2024

Committee Secretary
Senate Standing Committees on Economics
Parliament House
Canberra ACT 2600

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

We thank the Senate Economics Legislation Committee for the opportunity to provide a submission on the Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024. This submission is focused on Schedule 4 of the Bill, which relates to provisions implementing the legislative framework for public Country-by-Country Reporting (CbCR).

The FSC is a peak body which sets mandatory standards and develops policy for more than 100 member companies in the financial services industry. Our full members represent Australia's retail and wholesale funds management businesses, superannuation funds, investment platforms and financial advice licensees. The industry is responsible for investing more than \$3 trillion on behalf of over 15.6 million Australians.

We are grateful for the constructive approach taken by the Government as part of the public consultation process, which has produced a number of refinements to the Bill that align the requirements of Australian public CbCR more closely to similar frameworks in other significant global reporting jurisdictions. Especially important is the additional clarity provided on the role of the ATO in exercising its discretionary powers on exemptions from reporting in the supporting materials, and further context on determining the list of jurisdictions for which country-level reporting is required.

ATO discretionary powers

We welcome the clarity provided in the Explanatory Memorandum on the process by which the ATO may use its discretion to provide exemptions from publication of information where appropriate, such as to protect against the release of commercially sensitive information where this would result in serious harm to the commercial position of a reporting entity.

The exemption process is an important means of protecting entities in circumstances where the release of information may be detrimental to their business activities while providing limited benefit in terms of tax transparency. The Explanatory Memorandum clarifies the intent behind the use of discretion by the ATO Commissioner, while also indicating the ATO is to issue further guidance outlining the process in more detail.

Noting the new qualification in the Bill limiting the exemption period to one year, this additional requirement limits the ATO's discretion to provide a single exemption for entities in circumstances that are unlikely to change over a longer period of time. This will increase the administrative burden on the ATO in receiving and determining applications, as well as creating uncertainty for entities required to reapply despite the circumstances remaining unchanged.

We recommend that this limit not be legislated, and that the ATO retains discretion to determine the appropriate maximum length of time for which an exemption instrument should apply based on their assessment of the facts and circumstances of individual applications.

Jurisdictions determination

With developments to minimise global tax avoidance internationally through multilateral tax agreements, and bilateral agreements on sharing tax information, many partner jurisdictions are working with Australian tax authorities to put strong safeguards in place to prevent harmful tax practices. In recognition of this, we recommend listing of jurisdictions be based on a transparent process of assessment, with reference to objective criteria and subject to regular review.

This would ensure the measure is better targeted at public disclosure relating to jurisdictions where potential tax risks still exist, ensuring greater consistency with global practice without compromising the policy principle that companies should pay their fair share of tax. It would produce closer alignment with the list of non-compliant tax jurisdictions specified by EU Directive 2021/2101, while remaining informed by the International Dealings Schedule where differences may exist in the level to which a jurisdiction cooperates with Australia and the EU.

We recommend that as part of objective criteria by which tax cooperation can be assessed, the list of jurisdictions requiring country-level reporting should exclude countries that have implemented global and domestic minimum taxes in line with the OECD/G20 Base Erosion and Profit Shifting Pillar Two tax rules or have equivalent taxes to a minimum rate of 15 per cent, and which also participate in an automatic exchange of tax information with the ATO.

Reporting

Consistency in the financial information reported in confidential and public CbCR regimes and the use of solely objective metrics in required disclosures would improve the usefulness and comparability of information while minimising the compliance burden on reporting entities.

Allowing for bottom-up reporting from the entity's financial statements, rather than requiring a top-down approach based on consolidated financial statements, would be consistent with reporting under the confidential CbCR regime. This would enable improved data matching by the ATO while streamlining the process for entities to comply with both disclosure regimes.

Metrics that include qualitative elements should not be required, as differences in methodology or conceptual understanding may limit its effectiveness as a basis for objective comparison. An example is the requirement to explain the difference between accrued tax and tax on accounting profits. As the reasons will vary between reporting entities and ensuring consistency in responses would be very difficult, this metric is unlikely to produce comparable data.

We would be pleased to provide the Committee with additional information in support of this submission on request. If you would like to discuss this submission further, please contact me at [REDACTED]

Kind regards,

James Young

Policy Manager, Funds Management and Taxation