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Committee Secretary
Economics Legislation Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Email: economics.sen@aph.gov.au

Dear Committee Secretary

SUBMISSION TO INQUIRY - TREASURY LAWS AMENDMENT (MAKING MULTINATIONALS PAY THEIR FAIR SHARE-INTEGRITY AND TRANSPARENCY) BILL 2023

We thank you for the opportunity to provide a submission on the above Bill and reiterate our support for the Government's intention to ensure entities pay their fair share of tax.

AIA Australia is a life and health insurer, and part of the AIA Group, which is listed and headquartered in Hong Kong, and operates in 18 markets throughout Asia-Pacific. We provided feedback to Treasury's consultation on the Government's tax transparency proposals, and have repeated our concerns in respect to risks of commercial disadvantage in this submission.

We welcome the changes made to the Bill following consultation. These changes reflect the business community's serious concerns regarding the disclosure of information, over and above the requirements under other similar international initiatives such as the European Union's public country by country (CbC) reporting directive (EU public CbCR).

The Explanatory Memorandum to the Bill acknowledges that further consultation with industry about disaggregated CbC reporting is required. Our submission includes comment on this element.

Notwithstanding the changes made to the Bill, several key concerns remain:

- The bill requires entities to disclose data on revenue from third parties, revenue from related parties and the book value of tangible assets. These disclosure requirements are over and above the requirements under the EU public CbCR.
- Similarly, the proposed requirement to publish the county-by-country data on a disaggregated basis (i.e. separately for each jurisdiction in which the disclosing entity operates) is in excess of the requirements of the EU public CbCR. This only requires disclosure of aggregated data for the 'rest of world' outside of EU member states or its limited list of jurisdictions posing specific tax problems.

We consider the correct approach to be aligning with the requirements under the EU public CbCR and not to require additional disclosures (such as of related party expenses, effective tax rate calculations, and the listing and valuing of intangible assets) to avoid unnecessary compliance burdens on entities and competitive distortions at the expense of Australian business.

Issues of commercial disadvantage

We remain concerned that competitors of disclosing entities could exploit this additional commercial information to obtain an unfair competitive advantage. The potential competitive disadvantage to the disclosing entity will be

even greater where it has competitors that do not operate in Australia and are therefore not subject to the public CbCR requirements proposed in this Bill. Those competitors will benefit from access to commercially sensitive information without having to disclose similar commercially sensitive information themselves. This commercial disadvantage continues even where a competitor is not operating in Australia, but is subject to the EU public CbCR as this Bill includes reporting of additional elements.

There are legitimate reasons for confidentiality safeguards; for instance, if the disclosing entity offers a single product or service in a market, it would be relatively straightforward to determine its profit margins and pricing strategy from the publicly disclosed information.

Business community concerns were also shared by the EU in developing its public CbCR:

“Public reporting does not serve the same purpose as information sharing and reporting between tax authorities. There are some types of information that are required to be shared between tax authorities, but that are not part of this latest proposal for public CBCR. EU tax authorities will receive 12 pieces of information, whereas public CBCR will consist of just seven pieces of information. EU tax authorities will receive more granular data for all third countries in which an EU company is active. They will also get from companies more complex data relating to the breakdown of a group’s turnover between that made with external parties and that made solely between group entities, as well as figures for stated capital and a company’s tangible assets.

When it comes to public disclosure, it is important that EU citizens get information about where in the EU companies are paying taxes. Citizens also have a legitimate interest in knowing whether companies active in the EU are also active in so-called tax havens. However, demanding publicly disaggregated data for all third countries could affect companies’ competitiveness and divulge information on key strategic investments in a given country. Similarly, the disclosure of turnover and purchases within a group poses a threat to multinationals in that it could divulge key information to competitors.”¹

The EU specifically addressed those concerns by not requiring disaggregated data in respect of jurisdictions outside of the EU, or disclosure of revenue from related parties or the value of tangible assets.

Our proposed solution

1. The proposed public CbCR in this Bill should align the requirements as closely as possible with those under the EU public CbCR. Specifically, it should remove requirements to disclose data on revenue from third parties, revenue from related parties and the book value of tangible assets. The drafting of the Bill should follow the language and intent of the legislative drafting of the EU reporting directive to mitigate the risk of unintended differences.
2. In addition, it should not require data in respect of jurisdictions outside of Australia to be disclosed by jurisdiction and should permit aggregation of all data in respect of the ‘rest of the world’.

We would welcome the opportunity for further discussions on the Bill and can provide insight and input from our global counterparts within the AIA Group. For any discussions, please contact in the first instance Sarah Phillips, GM Communications and Corporate Affairs,

Yours sincerely

Damien Mu
CEO and Managing Director
AIA Australia

¹ See https://ec.europa.eu/commission/presscorner/detail/fr/MEMO_16_1351