Australian
Chamber of Commerce
and Industry
ABN 85 008 391 795
T: +61 2 6270 8000
info@acci.com.au
www.acci.com.au

21 July 2023

Senate Standing Committee on Economics
Parliament House
Canberra, ACT 2600

email: economics.sen@aph.gov.au

RE: Inquiry into Treasury Laws Amendment (Making Multinational Pay Their Fair Share – Integrity and Transparency) Bill 2023

The Australian Chamber of Commerce and Industry (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 appreciate the opportunity to provide further comment on the proposed new Multinational Tax Transparency measures, particularly the country-by-country reporting (CbCR) requirements, following consultation on the exposure draft of the Bill earlier this year. We note that the revised draft of the Bill deals only with Disclosure of Subsidiaries and Thin Capitalisation, as reporting on these measures is to commence on 1 July 2023. The CbCR component was excluded from the current draft of the Bill, with its release and commencement of reporting pending further consultation.

While the revised text of the proposed legislation dealing with the CbCR is yet to be released, Attachment A to the explanatory memorandum of the revised draft of the legislation — Treasury Laws Amendment (Making Multinationals Pay Their Fair Share - Integrity and Transparency) Bill 2023 — provides some indication of the government's initial reaction to stakeholder feedback on the exposure draft.

ACCI commends the government on its decision to delay the release of the CbCR component of the Bill and deferring the commencement of reporting until 1 July 2024 to allow time for genuine consultation. Further consultation is essential to ensure the CbCR requirements are workable, better align with the requirements in other jurisdictions, and do not impose a large administrative and compliance burden on multinational enterprises (MNEs) operating in Australia.

Canberra
Commerce House
24 Brisbane Avenue
Barton ACT 2600

IOE International Organisation of Employers
Organisation Internationale des Employeurs
Organización Internacional de Empleadores
ICC
BUSINESS at OECD
THE BUSINESS AND INDUSTRY ADVISORY COMMITTEE

While ACCI supports the intent of the legislation to provide a meaningful improvement in tax transparency disclosure, as raised in the earlier consultation, we stress that it is necessary to get the balance right.

There were several elements of the CbCR from the exposure draft that proved to be contentious. ACCI's submission on the exposure draft of the Multinational Tax Transparency Bill and CbCR requirements identified a number of issues with its implementation, particularly:

- The inclusion of additional disclosure requirements that extended beyond the OECD standard or EU CbCR disclosure requirements
- The lack of a materiality threshold for jurisdictional reporting
- A lack of safeguards for sensitive data

Additional disclosure requirements

As raised in the ACCI submission, there is a need for consistency between the information disclosure requirements applying in Australia and those applying in other jurisdictions. Given the OECD CbCR framework is being instituted internationally, it is important that the Australian reporting requirements follow as closely as possible the reporting requirements that apply in other jurisdictions, particularly the OECD standard and the EU public CbCR.

The exposure draft of the Bill included metrics that were not required in other jurisdictions, specifically effective tax rates (ETRs); expenses from related party transactions; and details on intangible assets. There was no clear reason for the inclusion of this additional data, or indication of the benefit that reporting on these measures would provide. The lack of consistency with reporting requirements in other jurisdictions would lead to a substantial additional administrative and compliance burden, requiring MNEs to develop bespoke reporting frameworks for Australia.

Further, it would only serve to weaken international efforts on multinational tax transparency and CbC reporting, deterring other countries from engaging and increasing fragmentation of this internationally coordinated initiative.

ACCI commends the government on listening to stakeholder feedback with regard to these additional data disclosures. We welcome the decision to remove this data from the disclosure requirements, given the additional burden that it would place on MNEs. Following the removal of these data disclosures from the Australian CbCR requirements, it now better aligns with the OECD standard and those applying in other jurisdictions, such as the EU CbCR Disclosure.

Materiality

The earlier draft Bill does not include a materiality threshold, with MNEs required to disclose financial and tax information on all jurisdictions in which it operates, regardless of the amount of revenue generated or the characteristics and integrity of the tax system in a jurisdiction. Typically, while an MNE may operate in many countries, the bulk of an MNE's operations and revenue is generated in a small number of countries. The value of disclosing financial details and tax paid in every jurisdiction an MNE operates is unclear, particularly where the income generated in a country is very small. This only serves to greatly increase the administrative and compliance burden on MNEs.

The explanatory memorandum notes the EU approach which operates on an aggregate basis. Disclosure is limited to operations in EU member states and EU listed non-cooperative jurisdictions, with financial details and tax paid in other jurisdictions reported on an aggregate basis, as activity in the rest-of-world. A similar approach should be taken in Australia, with disclosure limited to the Australian operations of the entity as well as blacklisted/grey-listed states, i.e. countries with very low to zero tax rates and where there are no residency requirements for non-domiciled investors. Activity from all other countries should only be required to be reported on an aggregated basis as the 'rest-of-world'. This approach delivers the necessary information on an MNE's financial arrangements, revenues and tax paid in Australia, and thereby supports a better assessment of an MNE's activities in Australia[1]. It also enables authorities to identify where revenue generated in Australia may be directed to jurisdictions with effective tax rates below 15 per cent, without the very high administrative burden and compliance cost of reporting in every jurisdiction the entity operates.

The OECD CbC reporting framework sets a materiality threshold for disclosure at a turnover exceeding €750 million (or AU$1.24 billion). The Australian CbC reporting requirements should be consistent with the OECD standard, with MNEs only required to disclose on their financial and tax information, where the turnover from their operations exceeds AU$1.24 billion.

Further, a materiality threshold should be included in the Bill, exempting MNEs with operations in Australia below a certain threshold. This would be consistent with other financial disclosure requirements in Australia, such as the proposed new climate-related financial reporting legislation, which limits the disclosure requirement to entities reporting under Chapter 2M of the Corporations Act 2021, i.e. large businesses as defined by the Australian Securities and Investment Commission (ASIC). A similar threshold should apply to the CbC reporting requirements, with

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[1] See Explanatory Memorandum, Treasury Laws Amendment (Making Multinationals pay their Fair Share – Integrity and Transparency) Bill 2023; Impact Analysis for Schedule 1; p.52

entities only required to report if their Australian operations meet two or more of the following thresholds:

- $50 million or more in consolidated revenue
- $25 million or more in consolidated assets
- 100 employees or more.

This would exempt MNEs with a very limited and immaterial presence in Australia. It would also reduce the disincentive for entities looking to establish operations in Australia, as they would not be required to provide CbC reporting in the early stages of their development in Australia.

Impact on development of Pillar 2 Permanent Safe Harbour:

It should be noted that CbCR interacts with Pillar 2 safe harbour arrangements in a significant way. Having permanent safe harbour arrangements in place will greatly reduce the compliance burden for MNEs across the globe. However, there is a question about the implications for the development of Pillar 2 permanent safe harbour arrangements in light of Australia's CbC reporting requirements.

BEPS Action 13 was agreed upon as a minimum standard, and in 2015 countries signed up to the OECD agreement with the understanding that the tax reports would not become public. There is a concern that the proposed CbC reporting requirement, that involves publication of an MNEs financial and tax information in all jurisdictions that it operates on the Treasury website, might fundamentally change this dynamic. Not only could it cause some of Australia's partners to cease the exchange of CbC reports with Australian tax authorities, as recently stated by OECD Secretary General Matthias Cormann. Importantly, it could also undermine the ongoing review of CbCR and further discussions that are critical to the development of permanent safe harbour arrangements.

For these reasons, we ask Australia to follow the EU approach, with disclosure limited to the Australian operations of the entity as well as blacklisted/grey-listed jurisdictions. Activity from all other countries should only be required to be reported on an aggregated basis.

Safeguards for sensitive data

ACCI's earlier submission noted the lack of safeguards for sensitive data. The initial draft of the Bill requires MNEs to provide CbC financial and tax information to the ATO, with this information then published on a publicly accessible government website. However, there are only limited provisions in the proposed legislation to protect or exclude from publication information that may be confidential or commercially sensitive. While an entity can apply to the Tax Commissioner for an exemption from publication of information deemed to be confidential and

commercially sensitive, there are no clear guidelines as to what may qualify for an exemption or the criteria the Tax Commissioner would apply in determining whether to withhold this information from publication. The decision appears to be solely at the discretion of the Tax Commissioner.

Safeguards are essential to ensure confidential or commercially sensitive information is protected. More clarity is needed on how confidential and commercially sensitive information is to be treated, how MNEs can apply and qualify for an exemption from publication of this information and the criteria the Tax Commissioner must apply in determining whether to grant an exemption.

New debt creation rules

The proposed debt creation rules have been inserted into the draft legislation without consultation, or at least without business consultation of which ACCI is aware. The proposed provisions themselves are very broad, complex and raise further complexity through their interaction with other provisions, including the proposed new limitations on debt interest deductions (thin cap rules) and general anti-avoidance provisions.

ACCI has not had sufficient opportunity to inform and consult members or obtain outside advice and considers that the Committee itself will face difficulty in the time allowed. The proposed amendments should be deferred until proper consultation can be conducted. However, even our preliminary assessment of the proposed rules, indicates they raise several concerns:

- contrary to the stated purpose in the Explanatory Memorandum that they will catch debt creation schemes “that lack genuine commercial justification”, they will inevitably result in the denial of reasonable and arm’s-length arrangements that have a commercial purpose and a commercial justification;
- they will negatively impact production and investment in Australia. Due to the creation of distortion between debt and equity financing, multinational firms that have cash that could be deployed efficiently to fund production or investment in a related Australian entity may be forced to either enter into more expensive equity funding arrangements, or to divert those funds to other countries in which they operate;
- they are redundant or duplicative of current anti-avoidance provisions that already address intragroup debt that is for the purpose of avoiding Australian tax obligations. The superimposition of the proposed rules over existing general and specific anti-avoidance provisions and thin cap rules will only create unjustified compliance risks and impose costs that will divert resources from productive activity;
- they create competitive distortions between multinationals that have Australian headquarters and those that have group financing based in other countries. Although support for Australian businesses is often justified, that

support should be assessed and implemented as an express policy, not the side-effect of a distortionary tax rule.

It is important to get the balance right so that the CbC reporting requirements in the Multinational Tax Transparency legislation provide a meaningful improvement in tax transparency while at the same time are workable and do not impose a large administrative and compliance burden on MNEs operating in Australia.

ACCI would welcome the opportunity for further discussion on these and other issues related to the CbC requirements. Please contact ACCI's Principal Economist, Peter Grist on for further detail on ACCI's submission.

Yours sincerely

David Alexander
Chief of Policy and Advocacy