



26 July 2024

The Secretariat
Senate Standing Committee on Economics
Committee Office
Department of the Senate

Dear Committee,

Public Country by Country (CbC) Reporting Measure

Please find attached our responses to written questions on notice from Senator Bragg, relating to the inquiry into the Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024. The questions raised are in relation to Schedule 4 of that Bill dealing with public CbC reporting.

If the Committee has further questions, please contact me on [REDACTED] or by email at [REDACTED]

Yours sincerely

A large black rectangular redaction box covering the signature area.

Paul Suppree
Assistant Director

Written Question on Notice

1 What issues have you found with the methodology and definitions used in this reporting regime?

There are two key issues/areas of concern with the current proposal:

- 1 Uncertainty as to which countries are on the disaggregated list until after the law is passed and when (and how often) such lists will be subject to review; and
- 2 Ensuring the definitions used in the current proposal are identical to those used in non-public CbC and EU reporting (supplemented with the additional data point derived from GRI 207 on the description of the country by country reporting groups' approach to tax).

The disaggregated list of countries

As the law is drafted, taxpayers do not know what countries are to be disaggregated until after the law is passed.

The previous draft Bill listed 41 jurisdictions (including Singapore, Switzerland and Hong Kong) and was based off an ATO list of specified countries derived from the 2017 version of the ATO's International Dealings Schedule (minus some European countries).

At this stage, the only guidance available on the disaggregated list is contained the Impact Statement that accompanied the current Bill which states:

“Ultimately, the specified CBC jurisdiction list is a Ministerial determination. The draft list of jurisdictions is informed by the ATO's specified country list (per the international dealings schedule for international transactions). It reflects an Australian perspective having regard for our tax settings and multinational entities' observed arrangements, and it is acknowledged that the proposed CBC list is broader than the EU. For public CBC purposes, a number of factors would be considered in finalising the list, including: trade and investment flows relative to contracted international related party transactions, employee numbers in the offshore jurisdiction (relative to the related party expenditure/income flows) and the type of assets subject to the related party transaction (e.g. royalty/intangible or interest payments). Jurisdictions in scope of the EU public CBC rules were not included in the list, reflecting a complementary approach to global public CBC rules.

The Government intends to respond to stakeholder feedback via the explanatory statement supporting the Ministerial determination (expected to be signed after legislation is in place).¹

The tenor of the above infers an Australia centric assessment based on some objective criteria that will be complementary to the EU listing, but it is not clear whether other internationally relevant objective factors such as:

- whether a jurisdiction has implemented other OECD BEPS initiatives (such as anti-hybrid rules, or an intent to implement the 15% global minimum tax),
- the jurisdictional corporate tax rate,
- exchange of information agreements, or
- whether a double tax agreement and/or a free trade agreement with Australia exists

will be part of the integers used in any such Ministerial determination.

Furthermore, there is no indication as to when such disaggregated list will be finalised (or subject to consultation) and when (and if) it will be subject to regular review. By contrast the EU non-cooperative jurisdiction list is reviewed every 6 months.

To include countries that satisfy the objective factors listed above or have changed their laws to comply with those requirements equates to an unwarranted, hostile act on the part of the government towards those jurisdictions. Ignoring alignment with OECD BEPS initiatives in favour of Australian centric assessments may also have the impact of discouraging countries from adopting OECD BEPS changes to its tax system.

Adopting identical definitions to GRI 207 and non-public CbC reports

Whilst the draft Bill has improved definitional and operational consistency with the voluntary standard in GRI 207, non-public CbC reporting and EU reporting requirements, there are differences that need to be addressed that will alleviate compliance costs without impacting on the intent of the measure.

1. Australian headquartered groups with only domestic operations should not be required to report for a number of reasons:
 - a. Australian profits of wholly domestic groups are taxed in Australia where they are earned. There is no potential for multinational profit shifting.
 - b. Australia already has a voluntary tax transparency code. Making public CbC reporting mandatory is likely to result in such groups not reporting under the voluntary tax transparency code or duplicate reporting. CBC reporting will in effect make reporting under the voluntary code redundant or superfluous.

¹ See page 215 of the EM to the Bill

- c. Total turnover, taxable income and tax payable are already disclosed publicly for such taxpayers under the [Report of entity tax information](#) measure.
- d. Such groups currently obtain a “fast track” exemption from filing non-public CbC reporting annually. If they must report under the public CbC measure, there will be additional, unwarranted compliance costs.
- e. An equivalent exemption applies for groups wholly operating in one European jurisdiction under the EU CBC measure.
- f. The effect of having Australian disaggregated data is to treat Australia as if it was a non-cooperative jurisdiction from an EU CbC perspective given Australia is not part of the EU.

We note Australia headquartered groups with offshore operations will disaggregate their Australian data in addition to any finalised disaggregated country list.

2. Although the rules are generally aligned, they do not fully reflect either the GRI 207, non-public CBC or EU Directive reporting standards in relation to the reporting of the number of employees. The comparative definitions are reproduced in the following table:

Australian CBC proposal	GRI 207	Non-public CBC	EU Directive
The number of employees (on a full-time equivalent basis) <u>as at the end of the reporting period</u> .	Number of employees, and the basis of calculation of this number.	Number of employees on a full-time equivalent basis.	The number of employees on a full-time equivalent basis.

Australia is requiring the disclosure of employees on a full-time equivalent basis at the end of the reporting period whereas all other regimes provide some flexibility in reporting this information (i.e. on a year-end or an average over the year for example).

We understand that a view has been expressed that a static data point at the end of a period creates better data comparability across taxpayers. This view assumes that other FTE data sources which are approximating the same data point are somehow not robust enough and that the current non-public CBC regime, EU and the GRI standard is not sufficient for comparability between taxpayers. With respect we feel this view is misguided and may be driven by some unrealistic view that large multinationals can quickly relocate their staff in and out of jurisdictions, thereby impacting metrics such as profit to FTE ratios to somehow disguise transfer pricing risks (which are acknowledged as being an indicator of profits derived from related party intangibles with high profit margins). If this were the case, we would assume that such behaviour would not be discoverable under existing non public CbC reporting data over the last 8 years. In fact, the existing data from non public CbC reports seems to be sufficiently robust in any event to see such behaviour given reports such as those prepared by the EU Tax Observatory and its [Country-by-Country Report statistics explorer](#). In our view, having Australia adopt a different data point, which will

require additional collection processes and possibly have different figures than under existing non-public CbC reporting, GRI 207 reporting or the EU Directive, is unreasonable and will add nothing to the utility of the public tax data provided.

We note that the non-public CbC reporting requirement on employee numbers states (emphasis added):

“The Reporting MNE should report the total number of employees on a full-time equivalent (FTE) basis of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The number of employees may be reported as of the year-end, on the basis of average employment levels for the year, or on any other basis consistently applied across tax jurisdictions and from year to year. For this purpose, independent contractors participating in the ordinary operating activities of the Constituent Entity may be reported as employees. **Reasonable rounding or approximation of the number of employees is permissible, providing that such rounding or approximation does not materially distort the relative distribution of employees across the various tax jurisdictions.** Consistent approaches should be applied from year to year and across entities.”²

A simple solution would be to allow the same degree of flexibility in the calculation and reporting of FTE under the current proposal as long as that approach is adopted consistently. Allowing such an approach will not affect the utility of the FTE data and will ensure the numbers provided under the difference regimes are aligned. It ensures, and in fact improves the utility of data that has been in existence for the last 8 years.

2 In your submission you reflect on this regime being based on an incorrect assumption that Australia is coming from a zero-tax transparency base – can you elaborate on this and comment on how Australia sits in terms of tax transparency internationally?

Currently there are 7 mandatory public tax transparency related disclosures that can operate on groups operating in Australia, with 2 more proposed, excluding the current proposal. Australia has in fact been a global leader in public tax transparency reporting since 2014-15.

There are also 2 voluntary transparency regimes. A summary of each is shown below:

² See Final Report on Action 13 at page 34 in [Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report | READ online \(oecd-ilibrary.org\)](#)

Public Transparency Measure		Brief Explanation	Status
1	Report of Entity Tax Information	Turnover, total income, tax payable for entities with turnover greater than \$100 million	Mandatory
2	CEDS	Disclosure of tax residency status of subsidiaries	Mandatory
3	Extractive Industry Transparency Initiative	CbC country and project by project payments to governments for those engaged in the extractive industry in various countries	Mandatory
4	EU CbC Reporting	CbC reporting for groups operating in Europe	Mandatory
5	EU Banking Directive	CBC reporting for Australian Banks operating in Europe	Mandatory
6	Australian accounting standards on Tax	Accounting disclosures of tax expense and uncertain positions under AASB requirements	Mandatory
7	R&D Tax Incentive	Listing of claimants and amount of eligible expenditure.	Mandatory
8	Hydrogen Production Incentive proposal	Listing of claimants and amount of tax offset claimed.	Mandatory
9	Critical Mineral Incentive proposal	Listing of claimants and amount of tax offset claimed.	Mandatory
10	Australian CbC reporting	CBC reporting per current Bill.	Mandatory
11	Voluntary Tax Transparency Code	Various data points on tax and approach to tax management.	Voluntary
12	GRI 207	2021 disclosure standard developed by the GRI.	Voluntary

Whilst some of these are mandated by other governments or bodies, they show the breadth of potential regimes aimed at providing public transparency on taxpayer tax performance for entities with a connection to Australia.

In addition to these public transparency measures, there are mandatory non-public disclosures to tax authorities locally and around the world, including in particular non-public CbC reporting and disclosures under Automatic Exchange of Information Agreements. In Australia there also further taxpayer to ATO disclosures primarily aimed at multinationals. These include:

Taxpayer to ATO disclosures		Brief Explanation
1	Disclosure of related party dealings	Yearly disclosure of quantum, type and location of all related party dealings
2	Country by Country reporting	In addition to the CbC report are complementary Local and Master files that describe the related party transactions and pricing thereof for taxpayers each year
3	Reportable Tax Positions	Disclosure for certain tax position taken in relation areas of interest or concern to the ATO on a yearly basis.

The suite is comprehensive and as such it shouldn't be assumed we necessarily have a large public transparency gap. We also note the ATO is extremely proactive in providing high level macro data to the public on the tax performance of the large business sector that is readily accessible on its website including various and regular Finding Reports and it's [Tax and Corporate Australia](#) commentary and dataset.

3 In your submission you refer to the current approach to tax transparency in Australia as “inconsistent, contradictory and confusing” – can you comment on this and your suggestion to create one uniform code to reduce compliance costs for businesses?

As noted above, Australia’s public tax transparency journey commenced in 2014-15 with the yearly publication of the first [Report of entity tax information](#) with public disclosure of total turnover, taxable income and tax payable and Petroleum Resource Rent Tax. To this, further tax transparency measures have been added, without any discernible focus on the suite of information that already existed at that point in time. As has been noted by many commentators (including the ATO), these public numbers need to be understood in context and it should not be assumed an entity paying no tax is somehow avoiding its obligations or there is a fundamental flaw in the tax policy settings.

Overlaying this is the fact that the data is at least 12 months old when published, and thus varies from data that is published in the most recent financial accounts of taxpayers. Whilst it is possible to reconcile these numbers, it is not an easy exercise and is not often done. Overlaying this data set are other measures that are aimed at explaining the level of tax incentives, such as the [R&D tax transparency reports](#) which disclose the amount of eligible expenditure rather than the tax effect of that expenditure for year which is at least 2 years old. Furthermore, the [Voluntary Tax Transparency Code](#) is directed as being more contemporaneous with current year financial results, but is generally done at the economic group level, not at the individual entity level as is the report of entity tax information. The proposed [Hydrogen Production and Critical Minerals Tax Incentives](#) also propose tax transparency measures.

Complicating this further will be proposed public CbC reporting which is publishing data 12 months after the relevant year end. This is also complicated by the reality that this measure is very much an Australian led initiative to potentially impact global transparency outside more formal international forums such as the OECD.

In our submission we recommended a review of the suite of transparency initiatives to determine the most effective way to make what is currently published more coherent and relevant to all stakeholders. that meets stakeholder requirements and removes duplication. It is clear non-public CBC reporting and the GRI 207 tax standard (which has only been in existence since 1 January 2021) will have a role to play here.

In our view the Board of Taxation is best placed to undertake such a review and develop recommendations to make the current suite of measures more impactful and relevant to all stakeholders.