



28 June 2024

Senate Standing Committee on Economics
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Parliament House
Canberra ACT 2600

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Dear Committee,

**Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024
and Capital Works (Build to Rent Misuse Tax) Bill 2024– Public Country by Country Reporting**

The Business Council of Australia (**BCA**) and Corporate Tax Association (**CTA**) thank the Committee for the opportunity to provide comments on the abovementioned Bills.

This submission relates solely to Schedule 4 of the *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024* dealing with the proposed public Country by Country (**CBC**) reporting measure.

Both the BCA and CTA fully support public tax transparency measures that are meaningful, purposeful and proportionate. In our view, further tax transparency should build on, in an effective manner, existing mandatory tax transparency initiatives both in Australia and globally with an eye on ensuring the additional cost of compliance for both companies and the ATO is kept to a minimum.

Whilst the latest iteration of the Bill is a marked improvement on the initial exposure draft, there remain areas of concern. In our view, this stems from the incorrect assumption Australia is coming from a zero tax transparency base. It assumes adopting a non-mandatory, non-legislative global standard such as GRI 207 is somehow better at giving the community the information it needs to understand tax performance of large public and private groups rather than using existing mandatory, well understood and globally accepted datasets.

This can easily be remedied with a few minor amendments to the current proposal that will not detract from the Government's objective, namely:

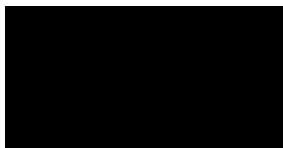
1. Adjusting the requirement for reporting FTE at the end of the relevant reporting period;
2. Providing more objective criteria for the determination of the disaggregated jurisdiction list;
3. Exempting groups wholly operating in Australia from the measure; and
4. Implementing a more holistic review of the existing Australian public tax transparency environment.

In our view, a medium term review of the tax transparency ecosystem is critical as departures from existing mandatory transparency measures, such as non-public CBC reporting, whilst maintaining the current ATO reporting of tax entity data, will more likely confuse rather than enlighten the community.

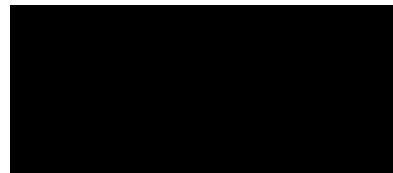
Details of these suggestions are attached as an Attachment to this letter.

Should you have any questions, please do not hesitate to contact either of us.

Yours sincerely



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Attachment

This Attachment provides further details on our suggested clarification to the existing public CBC reporting proposal:

1. Context and understanding of the current transparency environment
2. The need for definitional consistency
3. Better guidance on the determination of the list of disaggregated jurisdictions
4. Exemptions for wholly domestic groups, and
5. The medium term need for a better approach to tax transparency, not the current thousand points of light.

1. Context and understanding of the current transparency environment

Australia already has a number of disclosure requirements in place in regard to public tax transparency.

- a. Since 2015, the [Report of entity tax information](#)¹ has been in the public domain each year. Despite its shortcomings, it has become a basis for some objectivity on large business income tax and PRRT performance based off filed tax and PRRT returns. It currently applies to public and private groups with turnover above \$100 million and is accompanied by detailed ATO narrative on what the numbers do and do not mean.
- b. The Board of Taxation's Voluntary Tax Transparency Code provides a set of principles and standards to guide disclosure of tax information. It has been adopted by more than 200 businesses.²
- c. There is public reporting of tax information within annual reports/financial statements based on accounting standards.
- d. There is the mandatory requirement introduced by the current Government on the disclosure of residency status of subsidiaries in financial statements with effect from 1 July 2024.³

In addition to these, there are mandatory disclosures in other jurisdictions impacting groups operating in Australia, notably:

- a. In the European Union, the Public CBC directive⁴ will require European or non-European multinational groups with a total consolidated revenue of €750 million or more to publicly disclose certain income tax information on their website for

¹ See [TAX LAWS AMENDMENT \(2013 MEASURES NO. 2\) ACT 2013 \(NO. 124, 2013\) - SCHEDULE 5 Tax secrecy and transparency](#)

² See [Corporate Tax Transparency Code and Register](#)

³ See Schedule 1 of [TREASURY LAWS AMENDMENT \(MAKING MULTINATIONALS PAY THEIR FAIR SHARE--INTEGRITY AND TRANSPARENCY\) ACT 2024](#).

⁴ See [EU Directive 2021/2101](#)

financial years starting on or after 22 June 2024. The EU directive requires the public disclosure of certain existing non-public CBC reporting data for each of the 27 EU states and a 'blacklist' of uncooperative tax jurisdictions. There are Australian multinational groups and foreign owned groups which will be required to disclose data which is similar (and in many respects identical) to that proposed in the current Bill. The critical design feature of the EU rules is adopting existing mandatory non-public CBC reporting definitions to thus minimise the cost of compliance without impacting the utility of the data to be publicly available.

- b. The EITI initiative applying to the extractive industries similarly adopts consistent data points.⁵
- c. Non-public CBC reporting developed under Action 13 of the BEPS agenda has been a globally recognised and accepted standard since 2015. Whilst this information is not public, some groups do publish their full non-public CBC reports voluntarily using definitions that are well understood.⁶ Non-public CBC reporting has been operating in Australia since 1 January 2016. Systems and compliance processes exist for the collection of data as a global standard.

The critical point with all existing regimes is ensuring consistency of definitions. Inconsistent definitions not only create unwarranted additional compliance costs but also can give rise to differences in the same disclosure across different jurisdictions. In our view, unless there is an extremely strong case of for not adopting mandatory standards understood by tax authorities, taxpayers and the public, Australia should not depart from them.

2. The need for definitional consistency

The GRI 207 voluntary standard does, as a general rule, align with non-public CBC reporting definitions but supplements non-public CBC data with additional narrative, thereby adding context to the data. Australia's proposed rules adopt these extra GRI 207 narrative data points. This will as a result involve incremental mandatory compliance costs for any global group subject to the rules, particularly around the income tax reconciliation for each country.

In this regard we welcome the following paragraphs in the explanatory memorandum which make it clear that corporates can have regard to non-public CBC reporting definitions:

- 4.38 "There is significant overlap between the requirements in the GRI 207 and the requirements in the OECD Transfer Pricing Guidelines. The GRI 207 should be treated as the primary source of guidance in interpreting the requirements entities must publish under these amendments, including where there is any inconsistency between guidance materials. Where relevant, the disclosures are intended to align with the meaning of those in the GRI 207, even where the terminology is not identical. This is to ensure the terminology used in the amendments is appropriate for, and consistent with, Australia's domestic law. For example, the data disclosure on revenues from

⁵ See [Extractive Industries Transparency Initiative | EITI](#)

⁶ See [BEPS 2015 Final Reports - OECD](#)

unrelated parties reflects the equivalent GRI 207 data label ‘revenue from third party sales’.

- 4.39 Regard can be had to the BEPS Action 13 Guidance and the OECD Transfer Pricing Guidelines, particularly Chapter V and Annexes I to IV to Chapter V (which incorporates the OECD/G20 Base Erosion and Profit Shifting Project Action 13 - 2015 Final Report), where they provide greater detail on the interpretation of particular terms.
- 4.40 The inclusion of the OECD Transfer Pricing Guidelines is intended to reduce the compliance burden on entities already familiar with its interpretation as it is used by these entities in meeting their existing obligations for confidential CBC reporting under paragraph 815-355(3)(c) of the ITAA 1997.”

One data point however that remains different is in relation to the number of employees given the proposed Australian rules do not fully reflect either the GRI 207 or non-public CBC reporting standard. The comparative definitions are reproduced in the following table:

| Australian CBC | GRI 207 | Non-public CBC | EU Directive |
|--|---|--|--|
| The number of employees (on a full-time equivalent basis) as at the end of the reporting period. | 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). It is not clear why Australia feels it needs to adopt a different data point, which will require additional collection processes and possibly have different figures than under non-public CBC reporting, GRI 207 reporting or the EU directive without adding to the utility of the information 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.**”⁷

⁷ 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 \(oecd-ilibrary.org\)](#)

This is consistent with the GRI 207 standard which gives flexibility in the methodology. However, non-public CBC (and by extension also the EU directive) allows for the inclusion of independent contractors, while GRI 207 does not. This highlights the continuing challenges of this policy.

We recommend the FTE data point reflects consistency with the non-public CBC position and GRI 207 to allow some degree of flexibility on information that is already being collected.

3. Better guidance on the determination of the list of disaggregated jurisdictions

It is not surprising that a review of the 35 [Public country-by-country reporting submissions](#) to the second Exposure Draft of the CBC reporting measure expressed varying views on which jurisdictions should be disaggregated, with some civil society groups wishing to expand the list of 41 jurisdictions and others questioning the disaggregation of information for Singapore, Hong Kong and Switzerland in particular, given each of these jurisdictions have met commitments to global automatic exchange of information requirements, existing non-public CBC reporting and are committed to implementing Pillar Two with its minimum 15 per cent tax rate.⁸

The list of 41 jurisdictions arises from the ATO's International Dealings Schedule (IDS) of specified countries (last reviewed in 2017) with the exclusion of EU countries who are subject to EU CBC reporting. Six of the 12 jurisdictions in the list of EU non-cooperative countries overlap with the previous potential list of disaggregated jurisdictions. The list of EU non cooperative jurisdictions is listed in an Appendix.

As noted in the Impact Statement that accompanied the Bill:

“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).”⁹

However, a key purpose of the IDS is to support the ATO with its compliance objectives. The list of countries for public CBC purposes should ideally align with EU reporting requirements,

⁸ A list of the 41 countries can be found in the Appendix to this letter.

⁹ See page 215 of the EM to the Bill

but at a minimum there should be a clear, consistent and coherent set of criteria, as well as a robust process, for determining reporting jurisdictions. For example, the EU has a robust process and criteria around identifying non-cooperative jurisdictions for tax purposes, reviews the list twice a year, has assessment by a Code of Conduct Group (Business Taxation), and engagement with the proposed list of jurisdictions.

The Ministerial determination for the final list of countries should in our view also consider the underlying tax rate in the relevant jurisdiction, Australia's double tax treaty network and other more publicly transparent integers, such as whether the jurisdiction concerned has adopted the following:

- 1 Automatic Exchange of information protocols
- 2 Non-public CBC reporting measures
- 3 Anti-hybrid rules
- 4 Commitment to Implementing Pillar Two domestic minimum tax requirements
- 5 Australia's double tax treaty network.

Like the EU, jurisdictions on the list should be reviewed regularly (every six months).

4. Exemptions for wholly domestic groups

We note paragraph 4.14 of the EM states:

“CBC reporting parents that are Australian residents without foreign operations are still required to publish the selected tax information, provided they meet all other requirements. This requirement differs from OECD CBC reporting obligations and supports the policy intent of the measure which includes enhancing the tax transparency of large businesses operating in Australia.”

We note this seems at odds with the initial policy intent of requiring multinationals to be more transparent about their activities in foreign jurisdictions and the whole tenor of the measure including for example the specified country list or the fact the measure is called “Schedule 4—Multinational tax transparency—country by country reporting”.¹⁰

In fact, such entities to the extent they prepare general purpose financial accounts are already disclosing most of the proposed data points. Furthermore, others are complying with the voluntary tax transparency code (VTTC). In relation to the latter as there is overlap with the requirements of the VTTC and the current public CBC proposal, this may result in groups who prepare reports under the VTTC ceasing to do so and only report under the public CBC measure.

It is also worth noting that the EU Directive on Public CBC reporting does not apply to standalone undertakings or ultimate parent undertakings and their affiliated undertakings where such undertakings, including their branches, are established, or have their fixed places

¹⁰ See also the Media Statement by Assistant Minister Leigh dated 7 June [World leading country-by-country reporting introduced to parliament | Treasury Ministers](#)

of business or permanent business activity, within the territory of a single Member State and no other tax jurisdiction.¹¹

Currently a “fast track” exemption process exists under non-public CBC reports for groups without foreign operations from completing the filing requirements. We recommend as a minimum the same potential exemption process applies for public CBC reporting purposes for groups wholly operating in Australia.

5. The medium term need for a better approach to tax transparency, not the current thousand points of light

The area of public tax transparency has evolved over time and in the case of Australia (and impacted multinational groups with EU operations) includes information in various forms and from various sources in addition to the current proposal. These include the following mandatory reporting requirements:

1. The report of entity tax information
2. The disclosure of tax residency status in financial statements¹²
3. The public R&D offset disclosure¹³
4. Tax disclosures in financial statements
5. EU public CBC reporting requirements
6. The Extractive Industry Transparency Initiative.¹⁴

In addition, there are a number of voluntary public tax transparency reporting regimes, including:

1. The voluntary tax transparency code¹⁵
2. The GRI 207 reporting standard¹⁶
3. ESG reporting.

Each measure generally adopts different data points, covers different reporting periods and is of course in addition to non-public transparency reporting under existing income tax law, including various detailed disclosures of related party transactions in the IDS and non-public CBC reports. There is also significant overlap. For example, the current proposal will in many respects make the voluntary tax transparency code effectively redundant. Significant time is also spent on reconciling disclosures.

In our view, there is a critical need for the entire tax transparency landscape to be reviewed with a view to developing an environment where what is published is meaningful, coherent

¹¹ See Article 48b(2) of EU Directive 2021/2101 at [L_2021429EN.01000101.xml \(europa.eu\)](https://eur-lex.europa.eu/eli/dir/2021/2101/oj)

¹² See Schedule 1 of [TREASURY LAWS AMENDMENT \(MAKING MULTINATIONALS PAY THEIR FAIR SHARE--INTEGRITY AND TRANSPARENCY\) ACT 2024 \(NO. 23, 2024\)](#)

¹³ See [About the R&D program | Australian Taxation Office \(ato.gov.au\)](#)

¹⁴ See [Extractive Industries Transparency Initiative | EITI](#)

¹⁵ See [Voluntary Tax Transparency Code | Australian Taxation Office \(ato.gov.au\)](#)

¹⁶ GRI 207 can be downloaded at [GRI - Download the Standards \(globalreporting.org\)](https://www.globalreporting.org/standards/gri-standards/gri-207)

and purposeful. We note the Board of Taxation previously reviewed the voluntary tax transparency code, and we would suggest is well placed to undertake such a review.

Appendix

Original Proposed 41 Disaggregated Jurisdictions and the EU Non cooperative list

| | Specified country or jurisdiction | EU Non cooperative list - 20 Feb 2024 |
|----|-----------------------------------|---------------------------------------|
| 1 | Andorra | American Samoa |
| 2 | Anguilla | Anguilla |
| 3 | Antigua and Barbuda | Antigua and Barbuda |
| 4 | Aruba | Fiji |
| 5 | Barbados | Guam |
| 6 | Bahamas | Palau |
| 7 | Bahrain | Panama |
| 8 | Belize | Russia |
| 9 | Bermuda | Samoa |
| 10 | British Virgin Islands | Trinidad and Tobago |
| 11 | Cayman Islands | US Virgin Islands |
| 12 | Cook Islands | Vanuatu |
| 13 | Curacao | |
| 14 | Dominica | |
| 15 | Gibraltar | |
| 16 | Grenada | |
| 17 | Guernsey | |
| 18 | Hong Kong | |
| 19 | Isle of Man | |
| 20 | Jersey | |
| 21 | Liberia | |
| 22 | Liechtenstein | |
| 23 | Mauritius | |
| 24 | Monaco | |
| 25 | Montserrat | |
| 26 | Nauru | |
| 27 | Niue | |
| 28 | Panama | |
| 29 | Republic of the Marshall Islands | |
| 30 | Saint Kitts and Nevis | |
| 31 | Saint Lucia | |
| 32 | Sint Maarten (Dutch Part) | |
| 33 | Saint Vincent & the Grenadines | |
| 34 | Samoa | |
| 35 | San Marino | |
| 36 | Seychelles | |
| 37 | Singapore | |
| 38 | Switzerland | |
| 39 | Turks and Caicos Islands | |
| 40 | US Virgin Islands | |
| 41 | Vanuatu | |
| | | |
| | Countries on both lists | |