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

13 October 2015

Email: economics.sen@aph.gov.au

Dear Sir/Madam

Subject: Inquiry into Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015

We welcome the opportunity to provide comments to Senate Legislation Committee in relation to the Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015 (the Bill).

Our response deals with the proposed Country by country reporting (CbC) legislation contained in the Bill.

Yours sincerely,

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Partner, Deloitte

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1 Policy considerations

Section references are to the *Income Tax Assessment Act 1936 or 1997*, as appropriate, unless otherwise noted.

1.1 Appropriate use of CbC reports

The model legislation provided by the OECD in its final CbC report issued on 5 October 2015 contains clear guidance on the appropriate use of CbC reports by tax authorities, stating at Article 6.1:

The [Country Tax Administration] shall use the country-by-country report for purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks in [Country], including assessing the risk of non-compliance by members of the MNE Group with applicable transfer pricing rules, and where appropriate for economic and statistical analysis. Transfer pricing adjustments by the [Country Tax Administration] will not be based on the CbC Report.

The statements required to be provided by taxpayers under the Bill are directly linked to the OECD requirements for relevant entities to provide master and local files and CbC reports (see Note to section 815-355(3)).

Similarly, we believe it is important that the legislation and EM also clearly incorporate the OECD guidance on the intended purpose and use of CbC reports (noted above) to ensure the use of CbC reports by the ATO is for appropriate purposes.

2 Technical and design issues

2.1 Transitional arrangements

Where an Australian entity's foreign parent is not yet required to file a CbC report (such as where the parent jurisdiction has not yet implemented CbC reporting) imposing an obligation on the Australian subsidiary to file CbC, master and local files will create onerous compliance obligations for that entity. In many cases, the Australian entity will simply not be able to comply if the data is not yet being gathered by the parent entity.

In these circumstances, we believe an exemption from the CbC reporting requirements should be provided to the taxpayer.

To address cases where some countries do not implement CbC reporting, this exemption could be issued on a year-by-year basis, acknowledging that after a reasonable period to allow for implementation, the ATO may at that time reasonably be able to ask the Australian subsidiary for some or all of the master and local files.

2.2 Reporting in first year of application

Further, discretion should be provided in law to allow certain taxpayers in the first year of the Bill's application, to lodge at a later stage if the CbC report is subsequently lodged offshore outside of the Australian entity's reporting deadlines.

This amendment will take into account the later implementation periods of other countries where members of the global significant entities operate, to prevent duplication and an additional compliance burden.



2.3 Exemption process

At paragraph 5.21 of the EM (in relation to exemptions from the proposed reporting requirements) it states:

“It is expected that the Commissioner will provide more comprehensive guidance around how this exemption power will be applied.”

Given the impending commencement date of the legislation we believe such guidance should be provided as soon as practically possible to assist taxpayers to comply with the new law.

2.3.1 Entities with an APA

Where an entity has a current advance pricing agreement (APA) in place, we believe some relief from the CbC, master and local file requirement should be provided to these taxpayers.

The extent of relief to be provided would have regard to the nature and scope of the taxpayer’s existing APA agreement and the information already provided to the ATO as part of the APA process.

2.3.2 Automatic exemptions

Further, taxpayers with a parent entity who is not required to lodge a CbC report should be exempted under a general and automatic discretion under law, as opposed to relying upon the Commissioner to grant an exemption. Such circumstances should be classified as a ‘specified class of entity’ under section 815-365(3).
