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RE: Inquiry into Treasury Laws Amendment (Making Multinational Pay Their Fair Share – Integrity and Transparency) Bill 2023 Regarding Public Country-by-Country Reporting

Dear Sir or Madam:

The Australian government (the “Government”) announced a transparency measure for multinational entities to prepare for public release certain tax information on a country-by-country (“CBC”) basis and a statement on their approach to taxation, as part of the October 2022-23 Budget (the “Exposure Draft”). The transparency measure is intended to enhance the tax information entities disclose to the public and was to be effective for income years commencing from 1 July 2023.

After a first round of consultations with stakeholders, the Government released a revised version of the Exposure Draft (the “Revised Draft”) which omitted the public CBC reporting aspects of the initial Exposure Draft since these provisions are now proposed to apply from 1 July 2024. The Government has issued a “Treasury Laws Amendment (making multi-nationals pay their fair share – integrity and transparency) Bill 2023 Explanatory Memorandum (“Explanatory Memorandum”) which sets out the Government’s preferred options and included a call for further consultation on public CBC reporting. The Senate Economic Legislation Committee asked for public input by 21 July 2023. On behalf of Tax Executives Institute, Inc. (“TEI”), I am pleased to respond to the request for input.

About TEI¹

TEI was founded in 1944 to serve the needs of in-house tax professionals. Today, the organisation spans the globe with 56 chapters, including membership in

¹ TEI is organized under the Not-For-Profit Corporation Law of the State of New York. TEI is exempt from U.S. Federal Income Tax under section 501(c)(6) of the Internal Revenue Code of 1986, as amended.

Australia. As the preeminent association of in-house tax professionals worldwide, TEI has a significant interest in promoting fair tax policy at all levels of government. Our nearly 6,500 members represent 2,800 of the largest companies in Asia, EMEA, and North and South America.

TEI's members work for companies operating across all industries and market segments, including many companies who must currently file confidential CBC reports pursuant to BEPS Action 13. We thus believe our perspective brings a balanced view to issues raised under the Exposure and Revised Drafts, as well as the Explanatory Memorandum.

TEI Comments on the Exposure Draft

In this section we reiterate several of our comments included in our 28 April 2023 letter to the Director of the International Tax Branch of the Corporate and International Tax Division regarding the Exposure Draft that were not necessarily addressed in the Explanatory Memorandum.²

TEI appreciates the opportunity to provide its views on the proposed requirement for large multinational enterprises ("MNEs") with operations in Australia to disclose certain tax information on a CBC basis. As noted in the Exposure Draft Explanatory Materials, large multinational enterprises are subject to confidential CBC reporting, in accordance with Action 13 of the OECD's base erosion and profit shifting ("BEPS") project. The Explanatory Materials go on to state, however, "some companies voluntarily disclose some CBC information but disclosures are fragmented leading to inconsistencies and difficulties interpreting and comparing the information."³ Thus the Exposure Draft's requirement that certain MNEs publicly disclose CBC information is intended to "enhance transparency, as well as improve comparability and accessibility"⁴ of such information.

General Comment

Before discussing the details of CBC report the Exposure Draft proposes to make public, TEI is concerned that the Draft would apply extraterritorially, requiring non-Australian parent companies to disclose the requested information globally. This will trigger conflicts in terms of competence/authority as it renders certain elements of other jurisdictions' legislation ineffective. Other jurisdictions, however, have acknowledged that extraterritorial application of information reporting requirements is difficult and thus provided for an exception in such case. The EU public CBC reporting Directive, for example, provides for the possibility that EU subsidiaries of a non-EU MNE may not have all the information the Directive requires to be reported. In such event, the Directive permits the EU subsidiary to draw up, publish, and make accessible a report on all the income tax information in its possession, obtained, or acquired, and a statement indicating that the ultimate parent entity or the standalone undertaking did

² TEI's 28 April 2023 letter is available at https://www.tei.org/sites/default/files/tei_comments_-_australia_public_cbc_consultation_-_final_to_aus_treasury_28_april_2023.pdf

³ Explanatory Materials at paragraph 1.7.

⁴ *Id.*

not make the necessary information available. We recommend any final Australian legislation requiring publication of CBC information include a similar exception.

Specific Comments

The key objective of tax transparency is for stakeholders to have insight into where MNEs pay taxes in relation to their profits and substance. We support transparency where it is beneficial and informative. To satisfy these criteria, data disclosed for this purpose must be consistent and reasonably available and reportable, and the disclosure of such data cannot conflict with other important policy goals, such as the protection of confidential trade secrets.

However, TEI believes the structure of the Exposure Draft does not meet these stated aims in a balanced manner, and we question whether it is in line with Australia's international commitments, such as those under BEPS Action 13. Indeed, it is our strong view that any obligation to publish CBC information must be coordinated through a multinational organisation such as the OECD. It is worrisome enough that the EU has created its own standards for publishing CBC information, but if every country follows suit – as Australia proposed to do here – enormous complexity will be introduced into the production of the required CBC information under the various standards. Varying CBC information reporting requirements will require MNEs to expend significant resources explaining why a number reported in Australia is different from a number reported in, *e.g.*, the EU or under paragraphs 1 and 4 of the Global Reporting Initiative's ("GRI") Standard 207. Accordingly, we urge the Government to pursue a more standardized approach that also respects confidential business information.

Implementing the Exposure Draft as proposed may in fact result in less transparency and additional confusion given both the type of data requested and the Draft's definitions varying from non-public and public CBC standards / legislation in the rest of the world. Adoption of the Exposure Draft is likely to lead to several different versions of public CBC information existing for the same MNE for the same time-period and even different data for the same measure under the implementation regulations published by different tax authorities. Thus, while more data might be published, there may also be more confusion, leading to additional ambiguity and effectively less transparency, which would be contrary to the Exposure Draft's stated goals and is likely to require the expenditure of additional resources by both the tax authorities and taxpayers futilely reconciling such information. We highlight some of these issues below.

Paragraph 1.6 of the Explanatory Materials notes that the Government is "committed to improving the quality and comparability of tax disclosures by large businesses in Australia, by introducing standardised reporting requirements for large businesses." However, certain proposals in the Exposure Draft are inconsistent with the internationally agreed OECD CBC reporting requirements, Australian Pillar Two legislation, and GRI Standard 207 paragraphs 1 and 4 – as the Draft includes different measures and different definitions. The Exposure Draft is therefore at odds with the OECD's effort to seek global alignment and consistent standard by requiring publication of additional and

different information than what is included in the current non-public CBC. Australia, as an OECD member, should respect this process and align to the international standards to which it agreed.

In addition, much of the data the Exposure Draft requests is competitively sensitive, such as the role and location of every entity. This may affect both the ability and likelihood of MNEs providing the information required by the Exposure Draft and may, at worst, affect the attractiveness of Australian investment if such broad ranging disclosures are required. Regarding such commercially sensitive information, TEI recommends the Government adopt the EU approach that permits an MNE to defer the disclosure of specific items of information for five years, provided the MNE clearly disclose the existence of the deferral, give a reasoned explanation for it in the report, and document the basis for the reasoning.

Overall, as a suggested direction, and to support the stated objectives whilst being balanced in the information requested, and to avoid the unintended consequence of multiple versions of CBC reporting information being made public, we recommend the Government adopt the approach of the EU Public CBC Directive for purposes of the kind of information reported as well as how the information is made available publicly, with the same definitions and format.

The Exposure Draft requires the CBC information to be published on a website maintained by the Government. The Draft does not, however, state how long that information would remain on such a site. Publishing such information on a Government website is inconsistent with the EU's approach of requiring publication on the relevant MNE's website and for only five years. Whilst acknowledging the proposed amendments noted in the Explanatory Memorandum, TEI recommends the Government follow the EU's approach.

There should also be a *de minimis* exception for MNEs who only do a small amount of business in Australia. The exception should be based on a percentage of an MNE's worldwide revenue, *i.e.*, only if an MNE has a certain percentage or greater of its revenue from Australian sources should it be required to file a public CBC report. TEI would be pleased to assist with the calibration of any *de minimis* exemptions that would be appropriate for various global groups, including financial groups.

TEI Comments on the Explanatory Memorandum

Scope of Published Information

In this section we provide TEI's views on the Government's preferred option as set out in the Explanatory Memorandum. The Explanatory Memorandum incorporates many suggestions from TEI and other stakeholders and represents a significant improvement over the Exposure Draft. In particular, we appreciate the reduction in the scope of the proposed CBC report public disclosures and the deferred effective date. However, the Government's preferred approach still imposes an onerous burden on taxpayers.

We remain concerned the information requested goes beyond that required under the EU Directive on public CBC reporting and it is not clear why such additional information is required or helpful. The lack of consistency with the EU proposal increases confusion among stakeholders and the

compliance burden for taxpayers. As explained in our earlier submission, the EU directive requires separate disclosure of each EU member state together with those jurisdictions deemed to be non-cooperative tax jurisdictions. The rest of the world data is then aggregated. In line with the EU directive, the information to be disclosed should be limited to Australian operations with the rest of the world aggregated.

Moreover, there does not appear to be a materiality threshold (see our *de minimis* exception recommendation above) in relation to the data required to be published. Not only is the lack of a materiality threshold troubling from a compliance burden perspective, but it is also unhelpful from a stakeholder perspective in interpreting and understanding the published data. It's not clear why Australian stakeholders need or would be interested in an MNE's operations in an immaterial jurisdiction. Accordingly, if data on a jurisdictional basis is required, we propose limiting disclosure to the largest jurisdictions covering in aggregate eighty-five percent of revenue and employees of the MNE.

The Explanatory Memorandum would require a tax rate reconciliation by jurisdiction. This is not something that companies ordinarily prepare on a jurisdictional basis, and it is not clear what additional value this will bring to stakeholders. We would suggest limiting the tax rate reconciliation requirement to Australian operations only.

Safeguards for Commercially Sensitive Data

Unlike the EU Directive, there do not appear to be sufficient safeguards to protect against disclosure of commercially sensitive data regarding a business's operations. While reference was made in the Exposure Draft to allowing exemptions, there is no additional clarity in the Explanatory Memorandum regarding what might qualify for an exemption – it appears to be at the discretion of the Commissioner. Disclosure of sensitive data could harm the competitive position of the business, resulting in market distortions, particularly when compared to competitors not subject to disclosure such as competitors with no operations in Australia.

As a result of the requirement to publish jurisdiction by jurisdiction, this distortion could occur in any market in the world (not just Australia) in which one business is required to publish as a result of Australian legislation and a competitor is not. By not providing an exemption from publication of commercially sensitive data and requiring disclosure of data for all jurisdictions (not just Australia), these requirements create a direct and significant disincentive for growing businesses to commence operations in Australia.

Compliance Burden

The proposals are extremely broad and will impose a disproportionate administrative burden on taxpayers. Such disclosure increases the compliance burden at a time when large companies are already facing the complex implementation of Pillar Two and work is on-going with respect to Pillar One. The information requested goes beyond that included in OECD Confidential CCB report. As a result, many in-scope businesses will not have this data readily available.

Much of the information required is not something that many companies ordinarily prepare or retain today. For example, the requirement to prepare a tax rate reconciliation on a jurisdictional basis. This will require jurisdictional consolidations and tax rate reconciliations to be prepared. For a large group, collecting this data and preparing these reconciliations for every jurisdiction in which they operate will impose significant and disproportionate, admin and resource challenges.

As mentioned before, there does not appear to be a materiality threshold in relation to any of the data required to be published. As such, for large MNEs operating globally, the level of information required is extremely burdensome and, in some cases, it may not be practical to comply. Indeed, it's not at all clear what purpose is served by requiring publication of such data for jurisdictions in which the MNE has no material operations or income.

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TEI appreciates the opportunity to comment on the Exposure Draft and Explanatory Memorandum. Should you have any questions regarding TEI's comments, please do not hesitate to contact Benjamin R, Shreck of TEI's legal staff at bshreck@tei.org or + 1 202 464 8353.

Respectfully submitted,



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International President
TAX EXECUTIVES INSTITUTE

Appendix

	Australia CBC Draft Proposals	Existing OECD non-public CBC	EU Public CBC	GRI 207
P&L Measures by Jurisdiction	Required (though definition of Related Party Revenue is different)	Required	Required	Required
Tax Accrued & Paid by Jurisdiction	Required	Required	Required	Required
Balance Sheet Measures by Jurisdiction	Required	Required	Required	Required
Employees by Jurisdiction	Required	Required	Required	Required
Statement of approach to tax	Required	Not required	Not required	Required
Expenses from transactions with related parties that are not tax resident in the jurisdiction	Required	Not Required	Not Required	Not Required
ETR including reasons for the difference between CIT accrued on profit/loss and tax due if the statutory rate is applied to profit/loss	Required	Not Required	Not Required	Not Required
Tangible assets other than cash and cash equivalent	Requires listing of book value of tangible assets in the jurisdiction	Only requires consolidated or sum of NBV for all tangible assets in the jurisdiction	Only requires consolidated or sum of NBV for all tangible assets in the jurisdiction	Only requires consolidated or sum of NBV for all tangible assets in the jurisdiction
Intangible assets other than cash and cash equivalent	Requires listing of book value of intangible assets in the jurisdiction	Not required	Not required	Not required