4 May 2023

Director
International Tax Branch
Corporate & International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: MNETaxTransparency@treasury.gov.au

Dear Treasury

Multinational Tax Transparency – Public Country-by-Country Reporting

The Australian Financial Markets Association (**AFMA**) represents the interests of over 125 participants in Australia's financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. AFMA's members are the major providers of wholesale banking and financial market services to Australian businesses and investors.

We are pleased to lodge a submission on the Exposure Draft and draft Explanatory Memorandum to require public disclosure of Country-By-Country (**CbC**) reporting information.

Executive summary

AFMA recommends that:

- The legislation include a *de minimis* exemption such that significant global entities with a minimal presence in Australia are relieved of any disclosure obligation;
- The Government aligns the disclosure requirement to GRI 207 with no additional fields;
- The legislation includes an exemption for significant global entities that are headquartered in jurisdictions that have separate public CbC disclosure requirements, such as those in the EU;
- In particular, the Government not proceed with the proposed requirement to disclose effective tax rate. If it does, the effective tax rate should be aligned to the definition contained in accounting standards, such as AASB 112;
- Any disclosure of effective tax rates not commence prior to the lodgement by significant global entities of their GLobE information returns;

Australian Financial Markets Association
ABN 69 793 968 987
Level 25, 123 Pitt Street GPO Box 3655 Sydney NSW 2001
Tel: +612 9776 7955 Fax: +61 2 9776 4488
Email: info@afma.com.au Web: www.afma.com.au

- The Government ensures that the disclosure obligation applies to income years commencing on or after 1 July 2023, particularly for groups with a December year end;
- The ATO publish detailed guidance as to its expectations for compliance with the CbC disclosure obligation at the same time as the Bill to introduce the disclosure obligation is enacted; and
- The commencement of the disclosure obligation is the trigger for the repeal of the current annual disclosure of taxation information.

Restatement of AFMA policy position

AFMA was pleased to lodge a submission to the Treasury Consultation Paper on multinational tax integrity and enhanced tax transparency. In this submission, AFMA stated its preferred policy position in relation to the public disclosure of CbC information being that "any measure to require the mandatory disclosure of CbC information should be aligned to the EU Directive, both in terms of information to be disclosed and the timeline for disclosure." The basis for this view was to strike an appropriate balance between enhanced transparency to the public of taxation information of significant global entities against the compliance burden for those entities that operate in multiple jurisdictions. In stating our preferred policy position, we noted that companies will voluntarily make disclosures to stakeholders regarding ESG issues, of which tax information would be included, and hence it was not necessary that all tax information be subject to mandatory disclosure requirements. The existence of GRI 207 is representative of the desire of corporations to make sustainability disclosures with regards to taxation matters to meet stakeholder demands.

AFMA acknowledges that the legislative framework set out in the Exposure Draft, whereby Australia's mandatory disclosure of CbC information is largely aligned to the disclosures required under GRI 207, represents a statement of the Government's policy intent as it applies to mandatory disclosure of CbC information. Accordingly, the substance of our submission is to focus on enhancements and points of clarification within this policy intent.

In calibrating the legislative framework and determining the extent of the disclosures that are required to be made by significant global entities, AFMA continues to urge the Government to continue to differentiate between information that may be valuable for revenue authorities (such as the ATO) to receive in order to have a holistic view of the entity's taxation affairs globally and those which will assist the public in understanding the entity's approach to taxation.

Requirement for *de minimis* exemptions

The practical effect of the proposed legislation is that, where a CbC parent has within the CbC reporting group either an Australian entity or a foreign branch, the CbC parent will be required to make transparency disclosures in respect of the entire global group. To the extent that the disclosure requirements are legislated in their current form, the required disclosure of taxpayer information will be more onerous, and required earlier, than other mandatory disclosure regimes.

In the absence of any *de minimis* exemptions, significant global entities that have a small presence in Australia may determine that the easier path is to cease having Australian operations as opposed to complying with the disclosure requirements, choosing instead to provide services to Australian customers from regional hubs such as Singapore and Hong Kong,

thereby undermining Australia's competitiveness. Noting the Government's desire for disclosure where a significant global entity has a material taxation presence in Australia, AFMA recommends that the Government legislate exemptions that ensure that where a significant global entity has a limited presence in Australia, then this will not trigger a disclosure obligation. AFMA would be pleased to assist with the calibration of any *de minimis* exemptions that would be appropriate for ADIs or other financial entities.

Exemption for significant global entities subject to mandatory CbC disclosures

In order to recognise the transparency efforts of other jurisdictions and to take into account other international standards, AFMA's view is that the legislation should provide for an exemption for significant global entities that are headquartered in jurisdictions that have their own mandatory public disclosure of CbC information.

For example, in the EU, European financial institutions are already subject to a public CbC regulation since 2015 (Directive 2013/36/EU), the obligation of which was extended to other industries with the EU under the public CbC Directive of 2021.

The proliferation of multiple unilateral initiatives that pursue the same objective is a significant cause for concern. To avoiding double reporting for those Groups and the associated compliance burden, the legislation should provide for an appropriately calibrated exemption to remove duplication, particularly in circumstances where the disclosure obligations are not aligned and accordingly a single report to fulfil the multiple requirements is not feasible.

Required disclosures

Noting the Government's policy intent to align the disclosure obligations to GRI 207, AFMA recommends that the Government not proceed with the additional disclosure items above and beyond the GRI 207 standard, namely effective tax rates, expenses from related party transactions and details of intangible assets. Given that the GRI 207 disclosure requirements are more onerous than other mandatory disclosure regimes, such as those required under the EU Directive, additional disclosures will prevent those significant global entities that currently, or will in the future, make disclosures under the GRI 207 standard to use the disclosures to discharge their Australian obligations.

Publication of the additional information, in particular details of intangible assets, may represent disclosure of highly confidential and commercially sensitive information. Further, in determining the "list" of tangible and intangible assets at the end of the income year for the purposes of proposed Section 3D(6)(g), it is unclear as to the details to be included as part of the "list" and the requirements for disclosure of any assets that are not recognised in financial accounts, such as internally generated intangibles.

Effective tax rate disclosure

For Australian public companies, disclosure of effective tax rates is currently required for statutory reporting purposes, with the disclosure based on AASB 112. A similar disclosure of effective tax rate is undertaken by companies that have opted to disclose under the Board of Taxation's Voluntary Tax Transparency Code. AFMA notes that the methodology to calculate

the effective tax rate under the Exposure Draft will be different to the current disclosures and will exacerbate confusion as to why there are discrepancies in terms of disclosure.

Proposed Section 7(d) of the Exposure Draft states that, in relation to the disclosure of "effective tax rate" under paragraph 6(k), regard must be had to Article 5.1 of the OECD Pillar Two Inclusive Framework. That is, it is proposed that the effective tax rate is to be determined for disclosure purposes assuming the existence of the Pillar Two framework and the calculation of effective tax rate under that framework.

Article 5.1 of the OECD Pillar Two Inclusive Framework requires the calculation of the effective tax rate for a jurisdiction, as opposed to the group on a global basis, and accordingly it is unclear whether the proposed requirement in the Exposure Draft is on a group basis and how this calculation would be performed, particularly noting that the calculation under Article 5.1 is to be conducted before any top-up taxes are paid under the Pillar Two proposal. It is also unclear how the existence of any temporary or permanent safe harbours would affect the calculation of the effective tax rates.

More practically, it is currently uncertain when significant global entities will be required to undertake the calculation of effective tax rates under Article 5.1 for the purpose of lodging their GloBE information returns. Australia is yet to legislate to give effect to its commitments under the OECD Inclusive Framework and it is reasonable to assume that the application of Pillar Two in an Australian context will apply to income years starting on or after 1 July 2024. Under the OECD Consultation on the lodgement of the GloBE information returns, generally the returns are to be filed fifteen months after the end of the income year, i.e. 30 September 2026, and this is extended in the initial year to 31 December 2026. The requirement to disclose effective tax rates calculated under Article 5.1 of the Inclusive Framework for the purposes of Australia's CbC reporting would bring this calculation disclosure forward to 30 June 2025 (assuming that the issue raised below in relation to December balancers is resolved).

As noted above, AFMA strongly recommends that the Government not proceed with requiring the public disclosure of any additional information above what is required under GRI 207, particularly the disclosure of effective tax rate. However, to the extent that it does proceed with the requirement for significant global entities to disclose effective tax rates, the effective tax rate disclosure should be aligned to the definition within existing accounting standards, such as AASB 112, so as to maintain a level of consistency with existing public disclosures.

In the event that the Government decides to proceed with aligning a public effective tax rate disclosure to Article 5.1, our view is that any disclosure should be modified to include top-up tax paid. Additionally, this disclosure requirement should not be imposed in advance of the lodgement of the GloBE information returns. Finally, the Government should not require any disclosure of effective tax rates in advance of the commencement of the application of Pillar Two in an Australian context, i.e. for income years starting on or after 1 July 2024.

Commencement for December balancers

There is a discrepancy between the Exposure Draft and the draft Explanatory Memorandum in relation to commencement of the reporting obligation for groups with a 31 December year end. The draft Explanatory Memorandum states that the obligation applies to income years commencing on or after 1 July 2023; however the Exposure Draft states that the amendments

apply to the 2023-24 income year, which for a 31 December year end would be the year commencing 1 January 2023. AFMA recommends that the final legislation confirm that the measures apply to income years starting on or after 1 July 2023.

Requirement for guidance

Noting that the Exposure Draft reflects the public disclosure of CbC information based on GRI 207 and the comment in the draft Explanatory Memorandum that taxpayers will need to have regard to both the OECD CBC reporting guidance and GRI 207 in interpreting the disclosure requirements, it is clear that the ATO will need to issue detailed guidance to ensure consistency of reporting and minimisation of compliance burden. Our view is that this guidance should be available contemporaneously with the legislation to impose the disclosure requirement being enacted.

Discontinuance of current transparency measures

Many AFMA members currently have tax information disclosed by the Commissioner, pursuant to Section 3C of the *Taxation Administration Act* 1953. AFMA's view is that the public disclosure of CbC information should essentially be seen as replacing this disclosure and, particularly given that the current disclosure does not materially enhance the public's understanding of the taxation performance of disclosed entities, Section 3C should be repealed.

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Thank you for the opportunity to provide a submission in relation to the Exposure Draft. Please contact me on (02) 9776 7996 or at rcolquhoun@afma.com.au to discuss any of the matters that we have raised in this submission.

Yours sincerely,

Rob Colquhoun
Director, Policy