Asia Internet Coalition (AIC) Comments on Public country-by-country (CBC) reporting, Australia

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28 April 2023

To
The Director
International Tax Branch
Corporate and International Tax Division
Treasury, Langton Cres, Parkes ACT 2600

On behalf of the Asia Internet Coalition (AIC) and its members, I am writing to express our sincere gratitude to the Treasury, Government of Australia for the opportunity to submit comments on the Consultation on Public Country by Country Reporting. AIC is an industry association of leading internet and technology companies in the Asia Pacific region with a mission to promote the understanding and resolution of Internet and ICT policy issues in the Asia region.

As part of the October 2022-23 Budget, the government announced a transparency measure for multinational enterprises (MNEs) to prepare for public release of certain tax information on a country-by-country basis and a statement on their approach to taxation. The measure is intended to enhance the tax information entities disclose to the public (for income years commencing from 1 July 2023). The government is seeking stakeholders' views on the exposure draft legislation and accompanying explanatory material implementing this measure.

We welcome the opportunity to provide comments on the Government's proposed public country-by-country (CbC) legislation. We acknowledge the Government's desire to enhance tax transparency and for businesses to provide relevant and helpful information about their activities to investors and the public. However, given the cross-border and extraterritorial impact of any form of public CbC reporting, we recommend that the Government **hold off from introducing its legislation and instead coordinate its efforts with its international partners to develop a consistent global approach through relevant bodies such as the OECD**, the International Accounting Standards Board (IASB) and the Financial Accounting Standards Board (FASB). Differences in, or a duplication of, data points required under different initiatives will significantly complicate compliance and may lead to misinterpretation of the data reported.

In evaluating the need for, and the possible scope of, any public reporting of tax information, it will be important to take into account the outcomes of the Pillar One and Pillar Two reforms within the OECD / G20 BEPS Inclusive Framework. These should provide additional confidence to the public that MNEs are paying their fair share of tax in the jurisdictions in which they operate. The outcomes of the 2020 review of the OECD's BEPS Action 13 minimum standard on CbC reporting should also be taken into account.

If the Government nonetheless decides to proceed with public CbC reporting at this stage, the rules should be balanced, targeted and consistent with global tax transparency rules. Commercial confidentiality should be protected and the compliance burden on MNCs minimised.

Alignment with, and recognition of equivalence of, other similar requirements (e.g. the EU's public CbC reporting directive) would be key in achieving these objectives.

In this regard, we are grateful to be able to present our **comments and recommendations in Appendix A** of this paper and would also like to re-state our continuous support and assistance to the Australian government. As such, please find appended to this letter detailed comments and recommendations, which we would like to respectfully request the Treasury to consider.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact me directly at Secretariat@aicasia.org or +65 8739 1490. Thank you for your time and consideration. Importantly, we would also be happy to offer our inputs and insights on industry best practices directly through meetings and discussions to help shape the dialogue for an effective tax framework in Australia.

Sincerely,

Jeff Paine
Managing Director
Asia Internet Coalition (AIC)

Appendix A: Detailed Comments and Recommendations

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1. **Excessive Geographic Scope, overriding international standards:** The proposed public CBC reporting appears to be on a global basis, where in-scope MNEs would have to disclose CBC information relating to every country in which the MNE does business outside of Australia. This would effectively override the current mechanism to safeguard confidentiality and appropriate use of CBC information under the internationally agreed OECD BEPS Action 13, and would go beyond the recent EU public CBC reporting regime which has been scoped to cover only disaggregated CBC reporting in respect of EU member states and EU black/gray listed jurisdictions. If disaggregated international reporting is required, the rules should include appropriate mechanisms to exempt reporting for countries where only a small proportion of the MNE's revenue is recorded.

2. **Extensive information required, creating disproportionate burden:** The proposed extent of information reporting is unprecedented globally and goes beyond current internationally

agreed CBC disclosure standards and recent developments under the GRI 207 and EU public CBC reporting. The proposal to make additional information such as related party expenses, lists of tangible and intangible assets (and their associated values), effective tax rates (ETRs) and income tax reconciliation mandatory for disclosure creates a disproportionate compliance burden for in-scope MNEs that is in addition to existing CBC disclosure requirements and risks requiring disclosure of commercially sensitive information, as set out below. It is not clear the basis on which those additional data points (particularly with regard to valuations) are to be assessed. The compliance burden for the additional points alone will require some AIC members to divert significant resources from productive functions in Australia and Asia to administrative functions around the world.

3. **Certain information that would be required to be reported is commercially sensitive:** We note that, within the EU, information, such as a breakdown of fixed assets (including intangible assets as a subset of fixed assets) and turnover from related parties / third parties, was excluded from the European Commission's original proposal because of the "high competitiveness and misinterpretation risks". The OECD BEPS Action 13 CbCR also does not require CbC reporting on intangibles (list or book value). With respect to turnover, the European Commission's impact assessment additionally noted that "disclosing the split turnover may be seen by many (OECD, third countries and companies) as a breach of the G20 consensus on confidentiality". The disclosure of Pillar Two ETRs could also give rise to commercially sensitive information needing to be disclosed. Notably, implementation of the Pillar Two model rules on ETRs is yet to be finalized by many countries, including Australia. The proposal would therefore be uncertain and onerous

4. Exemptions regarding MNEs within scope

We recommend that:

- MNEs with limited operations in Australia be excluded from the scope of the proposed legislation to avoid placing a disproportionate compliance burden on such MNEs. The definition of CbCR reporting parent could be supplemented with the thresholds applicable to Australian taxpayers, such as the ATO's $250 million RTP threshold or the $100 million corporate tax transparency reporting threshold.
- Public CbC reports prepared by a parent entity according to its jurisdiction's requirements (e.g. an EU Member State's domestic legislation implementing the EU's public CbCR directive) be accepted as meeting equivalent requirements and that relevant MNEs should, accordingly, be excluded from the scope of the legislation.

5. Disclosure of Data

We recommend that the Government **adopt a similar approach to the EU's (with some suggested improvements in relation to commercially sensitive information)** to decrease the risk of misinterpretation of inconsistent public data and inappropriate public disclosures of sensitive commercial information and increase comparability across geographies. The risk of misinterpretation arising from public disclosure of income tax information is one of the reasons why OECD BEPS Action 13 specifically preserved the confidentiality of CbC reports.

- We have mentioned, and support, the EU's approach with respect to fixed assets (including intangible assets) and turnover from related parties / third parties. The decision of whether Pillar Two ETRs should be disclosed to the public is one which we believe should be taken at multilateral level. In a post-Pillar Two environment, MNCs will pay a minimum ETR of 15% in all jurisdictions in which they operate. It therefore seems appropriate to give further consideration to what such a disclosure would be intended to achieve.
- We also support the recognition in the EU directive that the "immediate disclosure of the data to be included in the report on income tax information could, in certain cases, be seriously prejudicial to the commercial position of an undertaking", to then give Member States the option of developing rules to delay public disclosure of specific, commercially sensitive information for up to five years. We do note that, while helpful, it may not provide sufficient longer-term protection where data remains sensitive over a longer period of time. An option for business to renew or to disclose information of the preceding years through an arithmetic average would be preferable.
- Applying the EU's approach to Australia could mean disaggregated reporting of a subset of CbC reporting information for (a) Australia where relevant Australian entities meet the threshold requirements proposed above; and, potentially, (b) countries meeting defined criteria. As an alternative to the EU's list of non-cooperative jurisdictions and assuming countries agree at multilateral level that Pillar Two ETRs should be disclosed, the Government may, for instance, consider requiring reporting for low taxed jurisdictions by reference to the Pillar Two minimum ETR of 15%, with no reporting required for jurisdictions in respect of which the transitional CbCR or permanent safe harbour applies or a qualified domestic minimum top-up tax applies. There would be aggregated reporting for all other countries.

6. **Safeguards on the appropriate use and interpretation needed:** We strongly believe that CBC reports should be exchanged confidentially between governments and the use of information contained within these reports be safeguarded via international tax treaties. Without the right context, the information therein could be easily misunderstood or misrepresented by the general public or bad actors. Such potential outcomes would detract from meaningful transparency and discourse the way we believe the Australian government has intended for the proposed measure. Nonetheless, if Australia decides to proceed with public CBC reporting, we urge the government to establish, in close and robust consultations with relevant stakeholders, necessary safeguards on the appropriate use and interpretation e.g. the government could publish detailed accompanying guidance that would help the public properly contextualize the information in a CBC report so that all parties refer to a single source of truth when it comes to interpreting the information.

7. **Insufficient lead time for consultations and implementation - Deferral of proposed start date:** While in-scope MNEs are used to preparing CBC reports under the OECD BEPS Action 13, given that Australia's proposed regime extends significantly beyond current international standards and that there will be a need for ATO to issue implementing guidance when the law is passed, the Australian government should provide for a robust consultation process to consult businesses (for both the draft law and implementing

guidance) and sufficient lead time to enable impacted businesses to update their internal processes and systems and compile and audit the relevant data. Moreover, the publication of any Pillar Two ETR data assumes that countries have implemented the GloBE rules and taxpayers have submitted their first tax returns (i.e. the GloBE Information Return and any local tax returns). The first GloBE Information returns are expected to be filed by 30 June 2026 for financial years ending on 31 December 2024. Assuming countries agree at multilateral level that Pillar Two ETRs should be disclosed, we believe it would be appropriate to defer any reporting requirements, at a minimum with respect to the Pillar Two ETR, until then. Other reporting requirements should be deferred until the income year commencing on or after 1 July 2024 at the earliest, in recognition of the many tax changes taxpayers are already dealing with, including implementation of Pillar Two and the EU public CbC reporting directive. This would also align Australia's timeline to that for EU CbC reporting.