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Tax Alert

Revised Australian draft legislation for public country-by-country reporting

At a glance

- Revised draft law for comment by 5 March
- Commencement deferred by 12 months to apply in respect of financial reporting periods commencing on or after 1 July 2024.
- New <$10 million Australian-sourced aggregated turnover threshold.
- Information required to be disclosed is reduced compared to the previous draft law.
- Aggregation of information is allowed for countries unless a country is listed (listed countries include Hong Kong, Switzerland and Singapore).
- Updated penalty section.
- How EY can help.

Revised exposure draft (ED) law for the proposed Australian public country-by-country reporting measures (PCbCR) has been released by Treasury for consultation (12 February 2024, on Treasury's website here). These additional tax transparency measures were announced in the 2022-23 Federal Budget.

Australia's PCBCR requires large multinational entities to prepare certain information on a country-by-country basis for public release by the Australian Taxation Office (ATO). The measures will affect both Australian multinational enterprises (MNEs) and foreign owned MNEs for the 2024/25 and later financial years.

This revision follows consultation on the previous April 2023 ED and includes some welcome refinements responding in part to submissions by EY and others, intended to more closely align the Australian requirements with the European Union's public country-by-country reporting (CBCR) regime.

However Australia's public CBCR regime will remain the most comprehensive public CBCR regime globally and additional work will be required by covered groups to comply. As currently drafted, the requirements continue to apply to entities that are below the CBCR threshold in their home jurisdiction, but above the Australian threshold.

Revised ED key changes compared to the previous draft:

- The measures apply to financial reporting periods commencing on or after 1 July 2024 (as previously announced).
- Additional threshold – An entity is only subject to reporting if $10 million or more of their aggregated turnover for the income year is Australian-sourced.
- Information required to be disclosed is reduced compared to the previous draft.
- Aggregation of information is allowed for countries unless a country is designated a specified country (specified countries include Hong Kong, Switzerland and Singapore).
- Updated penalty section, which puts beyond doubt that significant penalties will apply for not providing the required information on time.

The proposed changes are very wide in scope and may apply to many organisations. As such, they will require careful review to determine their application. Impacted groups will need to ensure systems are in place to comply with these new reporting obligations as heavy penalties can apply for non-compliance.

Key Highlights

Where the rules apply, the CBC reporting parent will be required to publish selected tax information on an Australian government website, by providing the Commissioner of Taxation with the information in an approved form within 12 months of the end of the relevant financial year. The Commissioner will then facilitate publication. It must also notify the Commissioner of any material errors in that published information within 28 days of becoming aware of them and provide the correct information -they may also correct any other non-material errors.

Reporting requirements

The revised ED includes a number of welcome changes including reducing the information to be provided including some commercially sensitive information such as a list of all intangible assets.

The revised new proposed reporting requirements are:

- The CBC reporting parent is required to publish general information including the group's approach to tax.
- For Australia and **each** *specified jurisdiction* that the CBC reporting group operates in, the CBC reporting parent must publish, at a group level, certain information (set out in the table below).
- For the non-specified jurisdictions the group has the choice of publishing the same information for all jurisdictions or alternatively publishing slightly reduced information on an **aggregated** basis for all non-specified jurisdictions.

A draft instrument proposes an initial list of 41 specified jurisdictions which the draft explanatory material states were selected on the basis that they are typically associated with tax incentives, tax secrecy and other matters likely to facilitate profit shifting activities. We note the list includes various 'tax havens' as well as in particular Hong Kong, Singapore and Switzerland. The list excludes Cyprus, Ireland, Luxembourg and the Netherlands as they are in the EU and may be subject to the EU CBCR.

The specified jurisdictions overlap to a certain extent with the EU black and grey lists (for example Hong Kong and a number of tax havens are on both lists), but there are also differences. For instance, Singapore and Switzerland only feature on the Australian PCBCR list and other countries, such as the Russian Federation, only feature on the EU lists.

The revised ED better aligns with the EU regulations in relation to both the items covered and the ability to aggregate non-specifically-listed countries.

Despite the welcome changes, the Australian PCBCR legislation remains the most extensive globally.

It has maintained the "approach to tax" as a document to be provided by the CBCR parent and refers to guidance set out in the voluntary accounting standard GRI 207.1.

The approach to tax is to be defined at a group level – covering all relevant jurisdictions – which will require a consolidated assessment and formal descriptions of how all entities within the group approach tax. For countries with existing tax governance requirements, this may be straightforward. However, for entities in countries whose regulators do not require formalised tax governance, the approach to tax may need to be formalised.

It also still requires an explanation of the difference between tax accrued and profit before tax multiplied by the country tax rate. Those that have undertaken preparation for BEPS 2.0 will note this is a complex process.

Another item is the requirement to disclose revenue from related parties *that are not tax residents of the jurisdiction*. While this is consistent with GRI 207.4 and companies reporting to this standard may have the information available, many companies will not have an existing obligation to produce this information as they have not adopted this standard and therefore may not have an existing process in place to gather and produce this information.

The full list of disclosures is below.

Information required to be reported

CBC reporting parent	Australia + specified jurisdictions – Per jurisdiction	Other jurisdictions – Aggregated data
Name of the entity	Jurisdiction name	
Names of other entities in group	Main business activities	Main business activities
Approach to tax	Number of employees	Number of employees
	Revenue from third parties	Revenue from third parties
	Revenue from related parties that are not tax residents of the jurisdiction	Revenue related party that are not tax residents of the jurisdiction
	Profit (Loss) before tax	Profit (Loss) before tax
	Book value of tangible assets (other than cash)	Book value of tangible assets (other than cash)
	Income tax paid (cash)	Income tax paid (cash)
	Income tax accrued (current year)	Income tax accrued (current year)
	Reasons for difference between income tax accrued and profit before tax multiplied by the country tax rate	
	Currency used in calculating and presenting information	Currency used in calculating and presenting information

Additional requirements may be added by regulation.

We note the draft EM lists an additional requirement to publish a link to the CBC group's EU CBCR reporting. However, this is not evident in the current ED drafting.

Affected Taxpayers

The new legislation essentially applies to all MNE groups that have a presence in Australia and have a global consolidated revenue in excess of AUD $1 billion, where the entity or another member of the CBC reporting group is either an Australian resident or a foreign resident who operates an Australian permanent establishment (PE). The lodgement obligation applies to the global parent entity regardless of whether that entity is Australian or foreign.

The revised ED adds a new threshold so that reporting only applies to groups that have more than A$10 million in Australia-sourced income.

The legislation also allows the Commissioner to exempt classes of entities and to provide exemptions for specific entities. While there is an indication that certain types of government entities might be exempted, it is expected that other exemptions will be limited.

A continuing concern is that the revised proposal still does not make an allowance for companies that do not meet the CBCR thresholds in their home jurisdiction. Australia has one of the lowest, if not the lowest, CBCR threshold at A$1billion. This threshold is significantly lower than the threshold in many other jurisdictions. Accordingly some organisations may not have any CBCR requirements anywhere in the world and will have to prepare all information from scratch. Based on current conversion rates the Australian threshold equates approximately to the following:

- 600 million EUR
- 650 million USD
- 4.69 billion CNY
- 97 billion JPY.

Penalties

Failure to comply with the new disclosure requirements may result in the imposition of penalties.

Failure to lodge on time penalties

The revised ED includes new specific penalty provisions for providing the CBCR information late. The penalties are 500 penalty units (A$165,000 at proposed new rate of $330 per penalty unit[1]) per part of 28 days late up to a cap of 2500 penalty units (A$825,000 at proposed new rate). These penalties also apply if material errors are not notified to the Commissioner for correction with the required 28 days.

Failure to comply with requirements under a taxation law

The revised ED still introduces new section 8C(1)(ab) into the Taxation Administration Act, which makes failure to publish the required CBCR disclosures in the prescribed manner required, a criminal offence.

Conviction would require the Commissioner of Taxation to prosecute in Court and carries a maximum fine of 20 penalty units for a first time offender ($6,600 at proposed new penalty unit rate), to 50 penalty units ($16,500 at proposed new rate) for a third time offender.

Managing Stakeholders

Reporting entities should expect the public, media and NGOs to compare their various PCBCR lodgements to look for inconsistencies. In addition, it can be expected that tax authorities will compare the PCBCR with the non-public CBCR disclosures. As a result, it will be critical for reporting entities to take a coordinated approach to their PCBCR and non-public CBCR requirements. This will include gathering the relevant information, creating the prescribed lodgement files (which can be expected to differ from jurisdiction to jurisdiction), cross checking the disclosures for consistency and lodge these files in the prescribed manner.

Because the public disclosure is managed by the ATO in what is expected to be a limited form of tabulation, the full story as to why a particular jurisdiction may appear to have a low tax burden may not be apparent from what the ATO publishes (e.g. carry forward tax losses, home country CFC or Pillar 2 pickup elsewhere etc.) and so groups may want to consider their own additional forms of contemporaneous disclosure to better inform stakeholders.

There is also a global focus on sustainability across many industries where stakeholders, including tax authorities are requiring a greater degree of public tax reporting. Given the need to align across multiple domestic reporting frameworks and a number of documents and the limited ability to provide context, many companies may consider whether to incorporate their approach to the PCBCR into a wider sustainability and tax agenda.

Next Steps

- Treasury is inviting submissions on the revised ED Law by 5 March 2024.
- Given the far-reaching effects, including the extraterritorial effect and the significant additional requirements, groups should start to prepare for the new rules.

[1] Proposed increase in penalty unit from $313 to $330 announced in the 2023-24 Mid-Year Economic and Fiscal Outlook

How EY can help

EY can help:

- We can assist groups to carry out a preliminary assessment of the reporting requirements under the revised ED and assess whether you will be subject to the reporting requirements
- We can assess your information readiness, including reviewing your information sources and providing automation options
- We can help prepare new or review existing tax strategy and tax governance frameworks (locally and globally) to determine the current approach to tax
- We can assist you in communicating with internal stakeholders including the Board and management.

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