Multinational Tax Integrity – public Country-by-Country reporting

FSC Submission to Treasury

May 2023

Contents

1 About the Financial Services Council

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers and financial advice licensees. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing more than $3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is one of the largest pool of managed funds in the world.

The FSC's mission is to assist our members achieve the following outcomes for Australians:

- to increase their financial security and wellbeing;
- to protect their livelihoods;
- to provide them with a comfortable retirement;
- to champion integrity, ethics and social responsibility in financial services; and
- to advocate for financial literacy and inclusion.

2 Submission

The FSC thanks Treasury for the opportunity to provide a submission on Draft Legislation to implement public Country-by-Country (**CbC**) reporting.

2.1 Bespoke reporting

The FSC notes the proposals in the Draft Legislation for reporting that is unique to Australia, and does not mirror requirements in any other comparable jurisdiction. This includes reporting on some related party transactions, reporting on effective tax rate, and the list of intangible assets and book value (some of these items are also discussed in more detail below).

One of the aims of the public CbC reporting is to aid public debate on issues. Having bespoke Australian reporting is unlikely to assist in this goal as the information will not be comparable with information disclosed elsewhere, and is likely to confuse the public and reduce clarity. For example, the public disclosure of book values of intangibles may be meaningless for some entities where the actual economic value of intangibles is very different from the book value (see section 2.2.1 below).

The Australian requirements are more extensive than the EU Directive and the FSC submits they could result in inconsistent approaches to disclosure and/or varying levels of compliance due to difficulty in reporting this information.

The Draft Legislation does not provide adequate justification for Australia to take a bespoke approach on this issue. If there are any reasons to require additional, uniquely Australian, reporting, then the FSC submits reasons for this should be strong, and articulated publicly in detail.

Reporting requirements that align with other jurisdictions should be used and any proposals for additional, Australia-specific reports should be removed from the legislation.

The FSC also notes that it is always open to Governments to add Australia-specific requirements at a future date if this is shown to be appropriate.

The FSC **recommends** the removal of bespoke Australia-specific reporting requirements from the public CbC reports.

Additionally, consistent with the EU Directive, the FSC submits businesses should be given the option to choose to include additional supplementary information with their public CbC reports. This will assist businesses that choose and intend to go above the minimum standard with the goal of building open and honest constructive and collaborative relationships with tax authorities and promoting community confidence.

The FSC **recommends** businesses be given the option of providing additional information with their public CbC report to provide appropriate context for the release.

2.2 Specific data items

2.2.1 Itemised reporting of intangibles

This requirement will require public disclosure of commercial-in-confidence information. The FSC submits that further justification is required for public disclosure of the value of individual company assets (noting the lack of substantial justification provided for the disclosure of this information).

Public disclosure of the value of intangibles could create problems for corporate takeovers and other corporate actions – information that was previously confidential would now be disclosed.

As noted earlier, the book value of intangibles could be very different from the economic value – and in some cases very valuable intangibles are not recorded in accounts at all, for example internally generated intellectual property.

There could be cases where two similar businesses are treated very differently for this measure. Each business has similar intangibles but the first business discloses the value of these intangibles because they were purchased, while the second business does not disclose because the intangibles were internally generated. This will result in very different public perceptions of businesses that are (for the purposes of this example) very similar. Given this, the inclusion of book value of intangibles is likely to confuse, rather than aid public debate (see concerns raised in Section 2.1 above).

The FSC **recommends** the removal of the requirement to report a list of intangibles and book value of these intangibles.

2.2.2 Effective Tax Rate

The requirement to report on effective tax rate (**ETR**) is – at this stage – bespoke to Australia, see Section 2.1 above. If this public reporting is retained, then the FSC submits that the timing of reporting on the ETR should align with the reporting requirement for OECD Pillar 2 purposes – it is proposed that public CbC would be required within 12 months of year end, while Pillar 2 calculations are required within 15–18 months of year end.

We also note that this requirement does not take into account:

- the ability of many groups to use a simplified ETR under the OECD rules for at least the first three years of Pillar 2.
- Companies being required to report an ETR below 15%, even when they pay top-up tax to bring the rate to 15%.

The FSC **recommends** that, if reporting on effective tax rate (ETR) is retained, then this reporting should align with the reporting requirements of the ETR for OECD Pillar 2 purposes, and include any top-up tax.

2.3 Recognition of size of entity

The proposed public CbC tax reporting obligations apply regardless of revenue, profit or number of employees in the Australian subsidiary of a global group.

The FSC submits that reporting rules should be calibrated to the size and other inherent features of the business – such as whether an entity is listed and traded in regulated markets, so as to avoid an unwarranted compliance burden. Other jurisdictions which are in process of adopting the rules on CbC reporting, such as the EU, have rules that are proportionate to the size of the business.

If this change does not occur, a multinational business that is just starting business operations in Australia could effectively be subject to expensive and onerous reporting requirements, even if the size of their Australian operations is very small. This could discourage multinational businesses from expanding into Australia, causing potential losses to Australian consumers.

The FSC **recommends** that the public CbC rules be tailored to the size of the Australian entity it applies to.

2.4 Comply or explain

In other jurisdictions, a comply or explain principle applies. This is a clause that permits the reporting entity to decline to disclose the information. This approach occurs in the European Union.

The FSC submits this should also apply in Australia, particularly for companies where the parent entity is located in another jurisdiction where the regulation does not impose publication of this information. While Australian entities must abide by the Australian law, requiring the same for parent companies in foreign jurisdictions creates difficulties.

For example, if the parent company is a private firm and therefore doesn’t publicly disclose information on its operations, the local subsidiary in Australia should be allowed to explain why it cannot provide certain information about its parent company.

The FSC **recommends** a comply or explain provision be included in the Australian proposal, similar to the EU CbC reporting requirements.

2.5 Harmonisation of Australian tax reporting requirements

With the introduction of public CbC reporting, there will be several different and inconsistent Australian tax disclosure regimes, operating on different timetables, with different data requirements, released through different reports in different online locations on different timetables.

This includes the ATO’s corporate tax transparency report, the Board of Tax’s tax transparency code, tax reporting in public financial reports, and (now) public CbC reporting.

These inconsistencies are unlikely to assist public understanding – instead users of the data are likely to be confused and mislead by the differences in the reports.

Given this, the FSC **recommends** a review be announced into the various regimes that mandate the disclosure of tax information of individual businesses, with the aims of consolidating and harmonising these regimes.

2.6 Commencement date

The FSC notes that the Exposure Draft and the draft Explanatory Memorandum are inconsistent in relation to commencement of the reporting obligation. The draft Explanatory Memorandum states that the obligation applies to income years commencing on or after 1 July 2023 but the Exposure Draft states that the amendments apply to the 2023–24 income year. If the Exposure Draft commencement provision were followed, the measures would applying to taxpayers with an "early balancing" substituted accounting period in an accounting period starting before 1 July 2023 (for example, for an early December balancer the first application would be for the year ended 31 December 2023).

We note the EU Directive commences for financial years starting on or after 22 June 2024.

Given this, the FSC **recommends** that the legislation applies to income years starting on or after 1 July 2023 in line with the Government's previously announced policy intention.