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Submission from the Tax Justice Network Australia, the Centre for International Corporate Tax Accountability & Research, Australian Nursing & Midwifery Federation, United Workers Union, Public Services International, Community & Public Sector Union-PSU Group on the Public Country-by-Country Reporting Feb 2024 Exposure Draft Legislation

2 March 2024

The Tax Justice Network Australia (TJN-Aus), the Centre for International Corporate Tax Accountability and Research (CICTAR), Australian Nursing & Midwifery Federation (ANMF), United Workers Union (UWU), Public Services International (PSI), Community & Public Sector Union-PSU Group (CPSU-PSU Group) welcome the opportunity to make a submission on this crucial draft legislation to implement public country-by-country reporting. We strongly support this legislation and offer some minor and common-sense amendments for improvement. We have made several previous submissions to Treasury and to Parliament with regards to the benefits of implementing full public Country-by-Country Reporting (pCbCR) following GRI 207 and will not reiterate those arguments again here.

Ensuring that all multinationals pay appropriate levels of taxation in Australia is essential to increase the funding available for the growing costs of health, aged care, and other essential public services. It is also crucial that domestic enterprises in these sectors are competing on a level playing field with multinational competitors. Previous research by CICTAR and TJN-

Aus has found many examples of multinationals receiving government contracts or funding that appear to have shifted substantial profits out of Australia – into tax havens – to avoid paying appropriate levels of tax in Australia. This is problematic for all corporations, but particularly egregious for corporations that are reliant on public funding, including those in the health and aged care sectors. The increased transparency on multinational tax payments proposed in this legislation is a major step forward towards exposing and addressing multinational tax avoidance.

[Recent analysis](#) has found that every year multinationals shift an estimated \$850 billion, or up to 40% of foreign profits, to tax havens. Australia lost an estimated \$11 billion in tax revenue to multinational profit-shifting activities in 2020. This lost revenue should be funding much needed improvements to health, education and other public services that are essential to fair and equitable society and a sustainable environment for businesses and communities.

It is unfortunate that the legislation does not require full pCbCR (only requiring reporting on Australia and a list of specified jurisdictions). However, we commend the language in the legislation which encourages full pCbCR rather than reporting on the rest of the world as an aggregate figure. We believe that the objective “to improve information flows to help the public, including investors, to compare entity tax disclosures, to better assess whether an entity’s economic presence in a jurisdiction aligns with the amount of tax they pay in that jurisdiction” is largely achieved by the proposed amendments to require a form of pCbCR. The extent to which this objective is achieved will be in part based on the willingness of multinationals to provide reporting on a full country-by-country (CbC) basis rather than an aggregated basis for the rest of the world. As reporting requirements continue to evolve at national, regional and global levels, and depending on the willingness to voluntarily provide full pCbCR, the question of requiring full CbC without aggregation should be revisited.

The most significant suggestion for improvement may be to adding Puerto Rico to the list of required CbC reporting jurisdictions. Puerto Rico is the largest – by volume of multinational profit shifting – jurisdiction that is not currently included in this list. Current US CbC reporting standards (in compliance with OECD BEPS 13) require reporting on Puerto Rico as a separate jurisdiction. For US federal tax purposes, and for most US states, Puerto Rico is considered a foreign jurisdiction. The current Australian list of CbC reporting jurisdictions already includes the US Virgin Islands which – as with Puerto Rico – is a US territory. Including Puerto Rico as a required CbC jurisdiction for Australia is essential. The international related party dealings expenditure [reported by the ATO](#) to Puerto Rico between 2016 and 2021 were over \$2.0 billion.

We would also recommend the inclusion of Trinidad and Tobago as a required CbC jurisdiction for Australia as it ranks higher on the Tax Justice Network’s Financial Secrecy Index than many of the jurisdictions included and may be an omission. The international related party dealings expenditure reported by the ATO between 2016 and 2021 were \$6.1 million. We strongly support the ability to add additional jurisdictions to the list as circumstances change.

The exclusion of a CbC reporting parent if less than \$10 million of its aggregated turnover for the income year is Australian-sourced is an acceptable cut-off point as it aligns with existing definitions of a small business entity. With regards to other exemptions that may be granted by the Commissioner to a specific entity or class of entities, the names of entities or class of entities which have been granted an exemption should be published annually, with reason for exemption, on the same government website hosting the CbC reporting information. We respect that the ability to grant exemptions may be necessary and that exemptions are expected to be “only exercised in limited circumstances.”

We generally support the categories of information to be reported on a CbC basis, recognising the adoption from GRI 207, and the recognition that reporting on Australia and specified jurisdictions is the minimum compliance standard. Full CbC, without aggregating the rest of the world, is a strong preference to achieve the stated objectives. The aggregated information for the rest of the world will be of limited value in achieving the stated objective, particularly for investors. An additional recommendation towards achieving the stated objective would be to also require separate CbC reporting, not aggregated, for the headquarter jurisdiction of the CbC reporting parent entity. This would be a meaningful improvement in the quality of the data for those entities self-selecting to report on an aggregated basis for the rest of the world.

Publicly listed US multinationals already report tax and other financial information on the basis of a split between the US and the rest of the world. The US data is largely already publicly available; however, having this information reported with the other CbC data, in a consistent and comparable format, would dramatically increase the utility of the CbC data for all stakeholders. Additionally, new FASB tax transparency reporting requirements will be in effect in 2025 for all US public companies and require greater levels of disclosure in all jurisdictions in which more than 5% of income taxes are paid.

We support the expectation that a CbC reporting group would publish a link to, or copy of, any reporting under the EU Directive 2021/2101 with the required CbC reporting in Australia. However, it would be preferable to include certain EU jurisdictions, known for their significant role in multinational profit shifting, to be re-included in Australia's list of required CbC reporting jurisdictions. As explained in the Explanatory Statement, these jurisdictions are the Netherlands, Luxembourg, Ireland and Cyprus, and have played a significant role in multinational profit-shifting. While reporting on these jurisdictions will be covered by the EU Directive, the EU threshold for reporting is significantly higher than proposed in Australia and contains far more loopholes and exemptions. Many multinationals that may be required to report in Australia may not be reporting under the EU CbC Directive. It is also worth noting that there are significant variations in national legislation to implement the EU CbC Directive.

Many multinationals that have a significant presence in Australia are owned via holding companies in the Netherlands and Ireland, which provides a strong rationale to explicitly include these jurisdictions for required reporting. All four of these EU countries also have existing requirements for most large locally incorporated private subsidiaries to file annual financial statements. Therefore, much of the data exists in the public domain but is not easily accessible for stakeholders. The cost of purchasing these financial statements is either free or significantly lower than the cost of purchasing comparable financial statements from ASIC in Australia.

International related party dealings made [public](#) by the ATO show that between 2016 to 2021 expenditures from Australia were \$43.49 billion to the Netherlands, \$37.26 billion to Ireland, \$4.95 billion to Luxembourg, and \$211 million to Cyprus. This compares to \$12.25 billion for Bermuda, \$2.32 billion for the Cayman Islands and \$1.70 billion for the British Virgin Islands which, appropriately, are included as jurisdictions for mandatory disclosure on a CbC basis in the proposed legislation.

The level of penalty applied, capped at \$782,500 annually, is relatively modest for the scale of operations for many of the covered multinationals. To further increase incentives for compliance, we strongly recommend that any multinational that falls to comply should be prohibited from obtaining a Statement of Tax Record (STR) from the ATO. Failure to obtain an STR would prohibit future federal government contracts and create a stronger enforceable incentive to comply. The government's purchasing power should be used more effectively to raise standards across industry, increase transparency and level the playing field for all businesses.

We congratulate Treasury and the Australian Government for bringing forward this important legislation to improve tax transparency for all multinational corporations with a presence in Australia. While this measure does not directly raise revenue it is likely to encourage changes in corporate behaviour towards less aggressive tax avoidance which may indirectly increase revenue. The greater transparency will also help level the playing field for all businesses in Australia, help restore integrity to the tax system and provide reliable data to inform further changes that may be required to close loopholes so that appropriate levels of tax are paid where profits are genuinely earned. Australia is helping to push forward the inevitable global trend towards greater tax transparency for multinationals and a fairer global tax system for everyone. We hope that our simple proposals to strengthen the legislation will be considered and efforts to further weaken the legislation will be ignored.

Sincerely,

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Background on the Tax Justice Network Australia

The Tax Justice Network (TJN) is an independent organisation launched in the British Houses of Parliament in March 2003. It is dedicated to high-level research, analysis and advocacy in the field of tax and regulation. TJN works to map, analyse and explain the role of taxation and the harmful impacts of tax evasion, tax avoidance, tax competition and tax havens. TJN's objective is to encourage reform at the global and national levels.

The Tax Justice Network believes our tax and financial systems are our most powerful tools for creating a just society that gives equal weight to the needs of everyone. But under pressure from corporate giants and the super-rich, our governments have programmed these systems to prioritise the wealthiest over everybody else, wiring financial secrecy and tax havens into the core of our global economy. This fuels inequality, fosters corruption and undermines democracy. We work to repair these injustices by inspiring and equipping people and governments to reprogram their tax and financial systems.

The Tax Justice Network Australia (TJN-Aus) is the Australian arm of TJN.

In Australia, the current members of TJN-Aus are:

- ActionAid Australia
- Aid/Watch
- Anglican Overseas Aid
- Australian Council for International Development (ACFID)
- Australian Council of Social Service (ACOSS)
- Australian Council of Trade Unions (ACTU)
- Australian Education Union (AEU)
- Australian Manufacturing Workers Union (AMWU)
- Australian Nursing & Midwifery Federation (ANMF)
- Australian Services Union (ASU)
- Australian Workers Union, Victorian Branch (AWU)
- Baptist World Aid
- Caritas Australia
- Centre for International Corporate Tax Accountability & Research (CICTAR)
- Community and Public Service Union (CPSU)
- Electrical Trades Union, Victorian Branch (ETU)
- Evatt Foundation
- Friends of the Earth (FoE)
- GetUp!
- Greenpeace Australia Pacific
- International Transport Workers Federation (ITF)
- Jubilee Australia
- Maritime Union of Australia (MUA)
- National Tertiary Education Union (NTEU)
- New South Wales Nurses and Midwives' Association (NSWMWA)
- Oaktree Foundation
- Oxfam Australia
- Publish What You Pay Australia
- Save Our Schools
- SEARCH Foundation
- SJ around the Bay
- TEAR Australia
- The Australia Institute
- Union Aid Abroad – APHEDA
- United Workers' Union (UWU)

- Uniting Church in Australia, Synod of Victoria and Tasmania
- UnitingWorld
- Victorian Trades Hall Council
- World Vision Australia

**Background on the
Centre for International Corporate Tax Accountability & Research (CICTAR)**

CICTAR is a global corporate tax research centre that produces information and analysis to untangle the corporate tax web. The Centre is a collective resource for workers and the wider public to understand how multinational tax policy and practice affects their daily lives. CICTAR's work supports public participation in the tax debate so that everybody can participate in decision-making that affects their communities.

For more information, visit the CICTAR website here: <https://cictar.org/>