

# EXPOSURE DRAFT

EXPOSURE DRAFT (19/12/2023)

1

2

Inserts for

3

**Treasury Laws Amendment Bill 2024:**

4

**Multinational tax transparency—**

5

**country by country reporting**

6

# EXPOSURE DRAFT

---

## Schedule 2—Multinational tax transparency— country by country reporting

### *Taxation Administration Act 1953*

#### 1 After section 3CA

Insert:

#### **3D Publication of information by certain country by country reporting entities**

- (1) This section applies to an entity for a period mentioned in subsection (2) (the *reporting period*) if:
- (a) the entity is:
    - (i) a constitutional corporation; or
    - (ii) a partnership in which each of the partners is a constitutional corporation; or
    - (iii) a trust of which each of the trustees is a constitutional corporation; and
  - (b) the entity was a country by country reporting parent for a period that includes the whole or a part of the period mentioned in subsection (2) that preceded the reporting period; and
  - (c) the entity is a member of a country by country reporting group at any time during the reporting period; and
  - (d) at any time during the reporting period, the entity or another member of the country by country reporting group is:
    - (i) an Australian resident; or
    - (ii) a foreign resident who operates an Australian permanent establishment (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*); and
  - (e) assuming that the reporting period were an income year, both of the following apply:
    - (i) the entity's aggregated turnover for the income year includes one or more amounts of income from an Australian source;
    - (ii) the sum of those amounts is \$10 million or more; and
  - (f) the entity is not included in a class of entities:

# EXPOSURE DRAFT

- 
- 1 (i) prescribed by the regulations for the purposes of this  
2 subparagraph; or  
3 (ii) specified in a legislative instrument under  
4 subsection 3DB(4); and  
5 (g) the entity is not specified in an exemption under  
6 subsection 3DB(5).
- 7 (2) For the purposes of subsection (1), the period is:  
8 (a) if paragraph (b) of this subsection does not apply—each  
9 period for which audited consolidated financial statements  
10 for the entity for the period are prepared; or  
11 (b) if the entity does not prepare audited consolidated financial  
12 statements—each period for which the entity would be, on  
13 the assumption that the entity were a listed company (within  
14 the meaning of section 26BC of the *Income Tax Assessment*  
15 *Act 1936*), required to prepare such statements.

## *Publication of information*

- 16
- 17 (3) An entity to which this section applies for a reporting period must,  
18 within 12 months after the end of the reporting period:  
19 (a) publish the information set out in section 3DA(1), except to  
20 the extent the entity and the information are specified in an  
21 exemption under subsection 3DB(6); and  
22 (b) do so by giving a document containing the information to the  
23 Commissioner in the approved form.
- 24 Note: Subsection 288-140(1) in Schedule 1 provides for an administrative  
25 penalty for failing to comply with this section on time.
- 26 (4) The Commissioner must, as soon as practicable after receiving the  
27 document given in accordance with paragraph (3)(b), make the  
28 information in the document available on an Australian  
29 government website.

## *Government related entities*

- 30
- 31 (5) This section does not apply to a corporate tax entity for a period  
32 mentioned in subsection (2) if:  
33 (a) the entity is a government related entity (within the meaning  
34 of the *A New Tax System (Goods and Services Tax) Act*  
35 *1999*); and  
36 (b) the Commissioner has given notice to the entity for the  
37 period under subsection (6).

# EXPOSURE DRAFT

- 
- 1 (6) For the purposes of paragraph (5)(b), the Commissioner may give  
2 notice in writing to a government related entity (within the  
3 meaning of the *A New Tax System (Goods and Services Tax) Act*  
4 *1999*) for one or more specified periods if the Commissioner  
5 considers that it is appropriate to do so.

6 *Interpretation*

- 7 (7) An expression used in this section or section 3DA or 3DB that is  
8 also used in the *Income Tax Assessment Act 1997* has the same  
9 meaning as in that Act.

10 **3DA Publication of information by certain country by country**  
11 **reporting entities—information to be published**

- 12 (1) For the purposes of paragraph 3D(3)(a), the information the entity  
13 must publish is as follows:  
14 (a) the name of the entity;  
15 (b) the names of each other entity that, at that time, was a  
16 member of the country by country reporting group;  
17 (c) a description of the country by country reporting group's  
18 approach to tax;  
19 (d) the matters listed in subsection (3) for the reporting period in  
20 respect of each of the following jurisdictions:  
21 (i) Australia;  
22 (ii) a jurisdiction specified in a determination under  
23 subsection (4), if the country by country reporting group  
24 operates in that jurisdiction;  
25 (e) in respect of the jurisdictions in which the country by country  
26 reporting group operates that are not mentioned in  
27 paragraph (d) of this subsection:  
28 (i) a description of the country by country reporting  
29 group's main business activities for the reporting period  
30 in the area consisting of those jurisdictions;  
31 (ii) for each matter listed in subsection (5), the amounts for  
32 the reporting period for that matter in respect of each  
33 jurisdiction in the area, published as a sum of those  
34 amounts for that matter;  
35 (iii) the currency used in calculating and presenting the  
36 information mentioned in subparagraph (ii);  
37 (f) if regulations for the purposes of this paragraph prescribe  
38 information—that information.

# EXPOSURE DRAFT

- 
- 1 (2) However, for the purposes of this section and sections 3D and  
2 3DB, the entity is taken to have published the information set out  
3 in paragraph (1)(e) if it publishes the matters listed in  
4 subsection (3) for the reporting period in respect of each  
5 jurisdiction in which the country by country reporting group  
6 operates.
- 7 (3) For the purposes of paragraph (1)(d) and subsection (2), the  
8 following matters are listed:
- 9 (a) the name of the jurisdiction;
  - 10 (b) a description of main business activities;
  - 11 (c) the number of employees (on a full-time equivalent basis) as  
12 at the end of the reporting period;
  - 13 (d) revenue from unrelated parties;
  - 14 (e) revenue from related parties that are not tax residents of the  
15 jurisdiction;
  - 16 (f) profit or loss before income tax;
  - 17 (g) the book value at the end of the reporting period of tangible  
18 assets, other than cash and cash equivalents;
  - 19 (h) income tax paid (on a cash basis);
  - 20 (i) income tax accrued (current year);
  - 21 (j) the reasons for the difference between:
    - 22 (i) the amount mentioned in paragraph (i) of this  
23 subsection; and
    - 24 (ii) the amount of income tax due if the income tax rate  
25 applicable in the jurisdiction were applied to the amount  
26 mentioned in paragraph (f) of this subsection;
  - 27 (k) the currency used in calculating and presenting the  
28 information mentioned in paragraphs (d) to (j) of this  
29 subsection.
- 30 (4) For the purposes of subparagraph (1)(d)(ii), the Minister may, by  
31 legislative instrument, make a determination specifying  
32 jurisdictions.
- 33 (5) For the purposes of subparagraph (1)(e)(ii), the following matters  
34 are listed:
- 35 (a) the number of employees (on a full-time equivalent basis) as  
36 at the end of the reporting period;
  - 37 (b) revenue from unrelated parties;
  - 38 (c) revenue from related parties that are not tax residents of the  
39 jurisdiction;
-

# EXPOSURE DRAFT

- 
- 1 (d) profit or loss before income tax;  
2 (e) the book value at the end of the reporting period of tangible  
3 assets, other than cash and cash equivalents;  
4 (f) income tax paid (on a cash basis);  
5 (g) income tax accrued (current year).
- 6 (6) The amounts published by the entity for the matters listed in  
7 paragraphs (3)(c) to (i) and subsection (5) must be based on:  
8 (a) if paragraph (b) of this subsection does not apply—amounts  
9 as shown in the audited consolidated financial statements for  
10 the entity for the reporting period; or  
11 (b) if audited consolidated financial statements for the entity for  
12 the reporting period have not been prepared—amounts that  
13 would be, on the assumptions that the entity were a listed  
14 company (within the meaning of section 26BC of the *Income*  
15 *Tax Assessment Act 1936*) and such statements were  
16 prepared, shown in those statements.

## 17 *Interpretation*

- 18 (7) For the purposes of determining the effect that paragraph (1)(c),  
19 subsections (3) and (5) and any regulations made for the purposes  
20 of paragraph (1)(f) have in relation to an entity, identify  
21 information mentioned in those provisions so as best to achieve  
22 consistency with the following documents, to the extent they are  
23 relevant:  
24 (a) the Transfer Pricing Guidelines for Multinational Enterprises  
25 and Tax Administrations, as approved by the Council of the  
26 Organisation for Economic Cooperation and Development  
27 and last amended on 7 January 2022;  
28 (b) *Guidance on the Implementation of Country-by-Country*  
29 *Reporting: BEPS Action 13 (2022)* of the Organisation for  
30 Economic Cooperation and Development;  
31 (c) Disclosures 207-1 and 207-4 of *GRI 207:Tax (2019)* of the  
32 Global Reporting Initiative's Sustainability Reporting  
33 Standards;  
34 (d) a document, or part of a document, prescribed by the  
35 regulations for the purposes of this paragraph.

36 Note 1: The documents in paragraphs (a) and (b) could in 2023 be viewed on  
37 the Organisation for Economic Cooperation and Development's  
38 website (<https://www.oecd.org/>).

39 Note 2: The document in paragraph (c) could in 2023 be viewed on the Global  
40 Reporting Initiative's website (<https://www.globalreporting.org/>).

# EXPOSURE DRAFT

---

## 3DB Publication of information by certain country by country reporting entities—corrections and exemptions etc.

### *Corrections*

- (1) If an entity becomes aware that the document given to the Commissioner under paragraph 3D(3)(b) contains an error, it:
- (a) if the error is a material error—must; or
  - (b) otherwise—may;
- publish information that corrects the error by giving a document containing the information to the Commissioner in the approved form.
- (2) If paragraph (1)(a) applies, the entity must publish the information by giving the document containing the information to the Commissioner no later than 28 days after the entity becomes aware of the error.
- (3) The Commissioner must, as soon as practicable after receiving the document given in accordance with subsection (1), make the information available on an Australian government website.

### *Exemptions*

- (4) For the purposes of subparagraph 3D(1)(f)(ii), the Commissioner may, by legislative instrument, specify a class of entity to which subsection 3D(3) does not apply.
- (5) For the purposes of paragraph 3D(1)(g), the Commissioner may, by notice in writing, specify an entity that is exempt from publishing information under subsection 3D(3).
- (6) For the purposes of paragraph 3D(3)(a), the Commissioner may, by notice in writing, specify:
- (a) an entity that is exempt from publishing information of a particular kind; and
  - (b) the particular kind of information that the entity is exempt from publishing.
- (7) A notice under subsection (5) or (6) is not a legislative instrument.

## 2 After paragraph 8C(1)(aa)

Insert:

# EXPOSURE DRAFT

---

(ab) to publish information in the manner in which it is required under a taxation law to be published; or

### 3 At the end of Division 288 in Schedule 1

Add:

#### 288-140 Penalty for failing to publish information on time

- (1) You are liable to an administrative penalty if:
- (a) you are required under subsection 3D(3) or paragraph 3DB(1)(a) to publish information by giving a document containing the information to the Commissioner in the \*approved form by a particular day; and
  - (b) you do not publish the information by giving the document to the Commissioner in the approved form by that day.
- (2) The amount of the penalty is 500 penalty units for each period of 28 days or part of a period of 28 days:
- (a) starting on the day mentioned in paragraph (1)(a); and
  - (b) ending when you publish the information by giving the document to the Commissioner in the approved form;
- up to a maximum of 2,500 penalty units.

Note: Division 298 contains machinery provisions for administrative penalties.

### 4 Application

The amendments made by this Schedule apply in relation to a reporting period mentioned in subsection 3D(1) of the *Taxation Administration Act 1953* that starts on or after 1 July 2024.