
TREASURY LAWS AMENDMENT BILL 2024: MULTINATIONAL TAX
TRANSPARENCY – COUNTRY BY COUNTRY REPORTING

EXPOSURE DRAFT EXPLANATORY MATERIALS

DRAFT

Consultation preamble

Treasury seeks feedback on the effectiveness of this exposure draft explanatory material in explaining the policy context and operation of the proposed new law, including, but not limited to:

- how the new law is intended to operate;
- whether the background and policy context is sufficiently comprehensive to support understanding of the policy intent and outcomes of the new law;
- the use of relevant examples, illustrations or diagrams as explanatory aids; and
- any other matters affecting the readability or presentation of the explanatory material.

Feedback on these matters will assist to ensure the Explanatory Memoranda for the Bill aids the Parliament's consideration of the proposed new law and the needs of other users.

Treasury and the ATO work closely to identify aspects of new tax laws which may benefit from ATO public advice and guidance (PAG). Feedback is also sought on any aspects of the new law where ATO PAG should be considered, to support stakeholders' understanding and application of the new law. Stakeholder feedback on this question will be shared with the ATO.

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
ATO	Australian Taxation Office
CBC	country by country
Commissioner	Commissioner of Taxation
GRI 207	Global Reporting Initiative's Sustainability Reporting Standards GRI 207:Tax (2019)
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
OECD	Organisation for Economic Cooperation and Development
OECD CBC reporting guidance	Chapter V set out in the Guidance on Transfer Pricing Documentation and Country by country Reporting of the Organisation for Economic Cooperation and Development and the Group of 20
TAA	<i>Taxation Administration Act 1953</i>

Chapter 1: *Multinational tax transparency – country by country reporting*

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Outline of chapter

- 1.1 Schedule 2 to the Bill amends the TAA to require certain large multinational enterprises (defined as CBC reporting parents) to publish selected tax information on a CBC basis for specified jurisdictions, and on either a CBC basis or an aggregated basis for the rest of the world. The information is to be published on an Australian government website, with publication facilitated by the Commissioner. The objective of these amendments is 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.

Context of amendments

- 1.2 The Australian Government announced in the October 2022-23 Budget a package of targeted measures to improve corporate tax transparency disclosures. The measures form part of the Government’s multinational tax integrity election commitment package, helping to ensure a fairer and more sustainable tax system.
- 1.3 The tax transparency measures complement the Government’s broader regulatory mix to improve corporate disclosures and reflects the shifting public sentiment for greater transparency and accountability on corporate activity, particularly from large businesses. This includes from investors and capital providers.
- 1.4 The shifting attitude for enhanced corporate disclosures is observed across the corporate governance landscape, including environmental and sustainability marketing claims and on climate related financial disclosures.
- 1.5 Tax transparency has generally lagged other forms of corporate disclosures. But there is momentum internationally to improve this, with the European Union’s public CBC reporting Directive (EU Directive 2021/2101) and GRI 207 constituting two examples of schemes intended to enhance the tax transparency of multinational enterprises.
- 1.6 It is in this broader context that the Government is committed to improving the quality and comparability of tax disclosures by large businesses in Australia, by introducing standardised reporting requirements for large businesses.
- 1.7 Currently, large multinational enterprises are subject to confidential CBC reporting (in accordance with Action 13 of the OECD’s base erosion and profit shifting project). In addition, some companies voluntarily disclose some CBC information, but disclosures are fragmented leading to inconsistencies and difficulties interpreting and comparing the information.
- 1.8 To enhance transparency, as well as improve comparability and accessibility, these amendments will require certain large multinationals to publicly disclose selected tax information. This information is required on a CBC basis for specified jurisdictions and on either a CBC basis or an aggregated basis for the rest of the world. This builds on global trends to help inform the public debate on the tax affairs of large multinationals. The information will be reported in a standardised format and will be centrally hosted to facilitate comparability across entities, jurisdictions, and reporting periods – building up a database that will increase in value over time for the public to access.

Summary of new law

- 1.9 Schedule 2 to the Bill amends the TAA to impose a new reporting obligation on certain large multinational enterprises.
- 1.10 Unless otherwise exempt, the reporting obligation applies to CBC reporting parents that are certain types of constitutional corporations, partnerships or trusts, and that are members of a CBC reporting group. Further, the CBC reporting parent is only subject to the reporting obligation if \$10 million or more of their aggregated turnover for the income year is Australian-sourced. The CBC reporting parent is required to publish selected tax information on an Australian government website by giving the information in the approved form to the Commissioner, with the Commissioner facilitating publication. Penalties apply for non-compliance.

Detailed explanation of new law

Entities covered by the amendments

- 1.11 The requirement to publish selected tax information applies to entities that are a CBC reporting parent within the meaning provided by section 815-375 of the ITAA 1997 and:
- if the CBC reporting parent is a company, it is a constitutional corporation; or
 - if the CBC reporting parent is a trust, each of the trustees is a constitutional corporation; or
 - if the CBC reporting parent is a partnership, each of the partners is a constitutional corporation.

Constitutional corporation is defined in subsection 995-1(1) of the ITAA 1997.

[Schedule 2, item 1, paragraph 3D(1)(a) of the TAA]

- 1.12 In addition, the CBC reporting parent is only required to publish information in relation to a reporting period if:
- they were a CBC reporting parent for a period that includes the whole or a part of the preceding reporting period; and
[Schedule 2, item 1, paragraphs 3D(1)(b) of the TAA]
 - they are a member of a CBC reporting group at any time during the reporting period; and

[Schedule 2, item 1, paragraphs 3D(1)(c) of the TAA]

- at any point during the reporting period, they, or a member of their CBC reporting group, is an Australian resident or foreign resident with an Australian permanent establishment; and
[Schedule 2, item 1, paragraph 3D(1)(d) of the TAA]
- \$10 million or more of their aggregated turnover for the income year is Australian-sourced; and
[Schedule 2, item 1, paragraph 3D(1)(e) of the TAA]
- they are not an exempt entity or included in a class of exempt entities.
[Schedule 2, item 1, paragraphs 3D(1)(f) and (g) of the TAA]

Entities with a small Australian presence excluded

- 1.13 CBC reporting parents are not required to publish the selected tax information if their aggregated turnover includes less than a total of \$10 million of Australian-sourced income. ‘Aggregated turnover’ has the meaning given by section 328-115 of the ITAA 1997 and is calculated for an entity’s income year. If a CBC reporting parent’s reporting period is not an income year, they must assume their reporting period is an income year for the purposes of calculating aggregated turnover.
[Schedule 2, item 1, paragraph 3D(1)(e) of the TAA]
- 1.14 The concept of a materiality threshold aligns with the approach in the EU Directive 2021/2101 and ensures that CBC reporting groups with genuinely small Australian operations are not subject to the reporting requirements. The \$10 million threshold aligns with the small business entity threshold provided by section 328-110 of the ITAA 1997.

Other exemptions

- 1.15 The Commissioner may exclude specific entities from having to publish the selected tax information through a written notice. Such a notice is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003* as it is of an administrative character.
[Schedule 2, item 1, paragraph 3D(1)(g) and subsections 3DB(5) and (7) of the TAA]
- 1.16 The Commissioner may also specify that an entity is exempt from publishing information of a particular kind through a written notice. Such a notice is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003* as it is of an administrative character.
[Schedule 2, item 1, paragraph 3D(3)(a) subsections 3DB(6) and (7) of the TAA]

- 1.17 In addition, a class of entities may be exempt from having to publish the selected tax information. This can either be by way of the Commissioner specifying the class of entity as exempt by legislative instrument, or the class of entity being prescribed by regulation. Section 18 of the TAA provides that the Governor-General may prescribe matters that the TAA permits to be prescribed.
[Schedule 2, item 1, paragraph 3D(1)(f) and subsection 3DB(4) of the TAA]
- 1.18 These amendments introduce a new reporting regime that applies to entities operating in multiple jurisdictions. These exemption powers are necessary to ensure the Commissioner can respond to unforeseen circumstances where disclosure of particular information by a particular entity would be inappropriate. The Commissioner, in exercising these discretions, must have regard to the policy intent of this measure which is for selected tax information to be made available to the public in a central location in a standard format. It is expected these discretions will only be exercised in limited circumstances.
- 1.19 As the requirement to publish the selected tax information will cover a wide range of entities, there is a chance that it may apply to government entities that are subject to alternative disclosure or accountability regimes through government budget processes. The Commissioner may exempt government related entities from this requirement. This ensures that the application of this rule does not inappropriately affect these entities.
[Schedule 2, item 1, subsections 3D(5) and (6) of the TAA]

Reporting period

- 1.20 An entity's reporting period will be the period for which audited consolidated financial statements for the entity are prepared. For CBC reporting parents that are Australian residents, this will typically be an income year.
[Schedule 2, item 1, paragraph 3D(2)(a) of the TAA]
- 1.21 If the entity does not prepare audited consolidated financial statements, their reporting period will be the period that the entity would have prepared such statements for had it been a listed entity within the meaning of section 26BC of the ITAA 1936. This is consistent with the *Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13 (2022)* of the OECD.
[Schedule 2, item 1, paragraph 3D(2)(b) of the TAA]

Information that must be published

- 1.22 The CBC reporting parent is required to publish selected tax information that relates to itself and its CBC reporting group. Broadly, the information required to be published relates to presence and tax dealings in particular jurisdictions. For Australia and specified jurisdictions determined by the Minister, particular

information must be published on a CBC basis. For all other jurisdictions the CBC reporting group operates in, the CBC reporting parent has a choice to publish that same information on either a CBC basis or an aggregated basis. *[Schedule 2, item 1, paragraphs 3DA(1)(d) and (e) and subsection 3DA(2) of the TAA]*

General information

1.23 The CBC reporting parent is required to publish the following general information:

- its own name;
- the names of each entity in the CBC reporting group;
- a description of the CBC reporting group's approach to tax.

[Schedule 2, item 1, paragraphs 3DA(1)(a) to (c) of the TAA]

Information on a CBC basis

1.24 For Australia and specified jurisdictions determined by the Minister that the CBC reporting group operates in, the CBC reporting parent must publish, at a group level:

- the name of the jurisdiction;
- a description of main business activities;
- the number of employees (on a full-time equivalent basis) at the end of the reporting period;
- revenue from unrelated parties;
- revenue from related parties that are not tax residents of the jurisdiction;
- profit or loss before income tax;
- book value at the end of the reporting period of tangible assets, other than cash and cash equivalents;
- income tax paid (on a cash basis);
- income tax accrued (current year);
- the reasons for the difference between income tax accrued (current year) and the amount of income tax due if the income tax rate applicable to the jurisdiction were applied to profit and loss before income tax;
- the currency used in calculating and presenting the above information.

[Schedule 2, item 1, paragraph 3DA(1)(d) and sections 3DA(3) and (4) of the TAA]

- 1.25 In addition to Australia and specified jurisdictions determined by the Minister, the CBC reporting parent can choose to publish the information listed above for all jurisdictions that the CBC reporting group operates in. In this case, the CBC reporting parent would not need to publish the same information on an aggregated basis. This choice reflects that reporting on a CBC basis for Australia and specified jurisdictions is the minimum compliance standard, and that entities may already report on a global CBC basis or may be inclined to voluntarily report in this manner in the future.
[Schedule 2, item 1, section 3DA(2) of the TAA]
- 1.26 Jurisdictions determined by the minister may be those that are associated with tax incentives, tax secrecy and other matters likely to facilitate profit shifting activities. Requiring information to be published on a CBC basis for these jurisdictions would provide greater transparency of how CBC reporting groups structure their tax affairs in these jurisdictions.
- 1.27 It is appropriate to provide the Minister with the power to determine these jurisdictions to allow the Government to consider current and emerging circumstances and respond in a timely manner. The legislative instrument would be subject to disallowance and sunseting and will therefore be subject to appropriate parliamentary scrutiny.

Information on an aggregated basis

- 1.28 If the CBC reporting parent chooses to report on a CBC basis for all jurisdictions the CBC reporting group operates in, it does not need to publish any information on an aggregated basis. However, if the CBC reporting parent only publishes information on a CBC basis for Australia and specified jurisdictions determined by the Minister, it must publish the following information on an aggregated basis for all other jurisdictions the CBC reporting group operates in:
- a description of main business activities;
 - the number of employees (on a full-time equivalent basis) at the end of the reporting period;
 - revenue from unrelated parties;
 - revenue from related parties that are not tax residents of the jurisdiction;
 - profit or loss before income tax;
 - book value at the end of the reporting period of tangible assets, other than cash and cash equivalents;
 - income tax paid (on a cash basis);
 - income tax accrued (current year);
 - the currency used in calculating and presenting the above information.

Amounts should be added for a cumulative total and positive and negative amounts should ‘net off’ if applicable.

[Schedule 2, item 1, paragraph 3DA(1)(e) and subsection 3DA(5) of the TAA]

- 1.29 The currency used in calculating and presenting the information is required to provide necessary context and assist in comparing disclosures.

Other requirements for reporting

- 1.30 These disclosures have been adopted from the GRI 207, which also covers a number of disclosure items that form part of the OECD recommendations for CBC reporting.

- 1.31 There is significant overlap between the requirements in the GRI 207 and the requirements in the OECD CBC reporting guidance. Where relevant, regard should be had to both the OECD CBC reporting guidance and GRI 207 in interpreting the requirements entities must publish under these amendments. The inclusion of the OECD CBC reporting guidance is intended to reduce the compliance burden on entities as they are already familiar with its interpretation as it is used by these entities in meeting their existing obligations for confidential CBC reporting under paragraph 815-355(3)(c) of the ITAA 1997.

[Schedule 2, item 1, subsection 3DA(7) of the TAA]

- 1.32 The combination of information required to be published is intended to provide the public with a comprehensive picture of the CBC reporting group’s tax affairs while minimising the compliance and administrative burden imposed on the CBC reporting parent. To further support these disclosures, where a CBC reporting group has prepared a report under the EU Directive 2021/2101, they are expected to publish a link to, or copy of, this report when publishing the tax information required by these amendments.

- 1.33 The selected tax information must be published within 12 months after the end of the reporting period to which it relates.

[Schedule 2, item 1, subsection 3D(3) of the TAA]

- 1.34 The selected tax information published by the CBC reporting parent must be sourced from audited consolidated financial statements. This is consistent with the EU Directive 2021/2101. The intent is for the data to be reconcilable and verifiable, and of a generally high standard for public release, without necessitating additional auditing.

[Schedule 2, item 1, paragraph 3DA(6)(a) of the TAA]

- 1.35 In circumstances where the CBC reporting parent has not prepared audited consolidated financial statements for the reporting period, the information published must be based on amounts that would be shown in such statements, had the entity been a listed company within the meaning of section 26BC of the ITAA 1936 and been required to prepare them.

[Schedule 2, item 1, paragraph 3DA(6)(b) of the TAA]

Regulation making power to require additional information

1.36 The amendments include a power to make regulations to prescribe further tax information that must be published in addition to the requirements set out above. This could include information that the CBC reporting parent must publish in relation to itself, or on a CBC or aggregated basis in relation to the CBC reporting group.

[Schedule 2, item 1, paragraph 3DA(1)(f) of the TAA]

1.37 The regulation-making power will allow the Government to ensure the requirements are kept up to date and reflect changes in the tax landscape. For example, if an additional requirement were added to the GRI 207, the Government may include this in the regulations if it were determined that publication of this information was important in improving tax transparency. This would provide taxpayers with certainty on their reporting obligations in a timely manner. The regulations would be subject to disallowance and therefore would be subject to appropriate parliamentary scrutiny.

1.38 Interactions with these amendments will be considered in the implementation of future measures that form part of the Government's broader plan to ensure multinationals pay their fair share of tax, including the 2023-24 Budget measure '*Implementation of a global minimum tax and a domestic minimum tax*'. As part of this process, the regulation-making power will provide the Government with flexibility to include additional information that must be published.

1.39 Pursuant to section 17 of the *Legislation Act 2003*, additional information that is included through regulations will be subject to appropriate consultation.

Interaction with confidential CBC reporting

1.40 The existing confidential CBC reporting obligations required under Subdivision 815-E of the ITAA 1997 and the new public CBC reporting obligations introduced in these amendments will operate in parallel, but they are distinct and separate reporting regimes. This approach is consistent with the approach taken by the EU, whose public CBC reporting regime also operates as a distinct and separate reporting regime compared to the confidential regime devised by the OECD under the BEPS Action 13 measure.

1.41 The 'CBC report' required to be provided to the Commissioner under paragraph 815-355(3)(c) of the ITAA 1997 is subject to strict confidentiality and cannot be publicly disclosed under Australia's international obligations in the OECD/G20 Base Erosion and Profit Shifting Project report on Action 13.

- 1.42 The information in the CBC report that is given to the Commissioner under Subdivision 815-E, or that is received on exchange pursuant to international exchange agreements, will not be published. This principle applies even in the event that a CBC reporting parent fails to publish the information required under these amendments.

Publication facilitated by the Commissioner

- 1.43 The CBC reporting parent will fulfil its requirement to publish the selected tax information by providing the information in the approved form to the Commissioner, for the purpose of the information being made public. The Commissioner will then make the information available on an Australian government website as soon as practicable.
[Schedule 2, item 1, subsections 3D(3) and (4) of the TAA]
- 1.44 The Commissioner's role is limited to facilitating the publication of the selected tax information. The Commissioner cannot amend or modify any of the information provided by the entity before it is published.
- 1.45 The concept of approved forms is used in the tax laws to provide administrative flexibility to specify the precise form of information required and the manner of providing it. This includes the particular electronic format and form of electronic transmission, which is necessary for the Commissioner to make the information available as soon as practicable using administratively convenient processes.

Correction of errors

- 1.46 If a CBC reporting parent becomes aware of a material error contained in any of the selected tax information that has been published, the CBC reporting parent must, no later than 28 days after the entity becomes aware of the material error, publish information that corrects the material error by giving a document containing the information to the Commissioner in the approved form.
[Schedule 2, item 1, paragraph 3DB(1)(a) and subsection 3DB(2) of the TAA]
- 1.47 If a CBC reporting parent becomes aware of a non-material error in any of the selected tax information that has been published, the CBC reporting parent may publish information that corrects the error by giving a document containing the information to the Commissioner in the approved form. This may cover circumstances such as where an entity makes a typographical error that it seeks to correct.
[Schedule 2, item 1, paragraph 3DB(1)(b) of the TAA]
- 1.48 Upon receiving the document containing the information to correct the material or non-material error from the CBC reporting parent, the Commissioner must

make the information available on an Australian government website as soon as practicable.

[Schedule 2, item 1, subsections 3DB(3) of the TAA]

Disclosure of protected information

- 1.49 Secrecy provisions in Division 355 of Schedule 1 to the TAA apply to protected information of entities. These provisions make it an offence for a taxation officer to disclose protected information, except in certain circumstances.
- 1.50 Imposing a statutory duty on the Commissioner to publish information provided by CBC reporting parents under sections 3D and 3DB ensures that the publication does not contravene the existing taxpayer confidentiality provisions of the TAA. This is because the publication falls within an existing exception (in subsection 355-50(1) of Schedule 1) for disclosures in the performance of a taxation officer's duties.

[Schedule 2, item 1, subsections 3D(4) and 3DB(3) of the TAA]

Penalties for non-compliance

- 1.51 Australian resident entities will be subject to the penalties under section 8E of the TAA if they commit an offence under section 8C of the TAA by refusing or failing to comply with their obligation to publish the selected tax information. Section 8C of the TAA has been amended to ensure it applies to this obligation.
- [Schedule 2, item 2, paragraph 8C(1)(ab) of the TAA]*
- 1.52 A CBC reporting parent is liable to an administrative penalty if the entity is required to publish information under section 3D of the TAA and fails to do so on time. That is, if the entity does not publish the information by giving the information to the Commissioner in the approved form within 12 months after the end of the reporting period to which it relates.
- [Schedule 2, item 3, subsection 288-140(1) of the TAA]*
- 1.53 A CBC reporting parent is also liable to an administrative penalty if the entity is required to publish information to correct a material error and fails to do so on time. That is, if the entity does not publish the information to correct the material error by giving the information to the Commissioner in the approved form within 28 days of the entity becoming aware of the error.
- [Schedule 2, item 3, subsection 288-140(1) of the TAA]*
- 1.54 An entity will be penalised 500 penalty units for each period of 28 days or part of a period of 28 days starting on the day when the information is required to be published and ending when the entity provides the information to the Commissioner (up to a maximum of 2,500 penalty units). The administrative penalty incentivises CBC reporting parents to comply with these reporting

obligations and is consistent with the penalties for failing to lodge the confidential CBC reporting statements required under Subdivision 815-E of the ITAA 1997.

[Schedule 2, item 3, subsection 288-140(2) of the TAA]

Commencement, application, and transitional provisions

1.55 The amendments commence on the first 1 January, 1 April, 1 July or 1 October to occur after Royal Assent.

1.56 The amendments apply to reporting periods commencing on or after 1 July 2024. For example, where an entity has a reporting period ending 31 December, the first reporting period for that entity commences on 1 January 2025.

[Schedule 2, item 4]