



**WRITTEN TESTIMONY
OF
ANNE GORDON, VICE PRESIDENT FOR INTERNATIONAL TAX POLICY
THE AUSTRALIAN SENATE ECONOMICS LEGISLATION COMMITTEE**

Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024

July 24, 2024

Chair, Deputy Chair and members of the Committee - Thank you for holding the hearing on this important issue. My name is Anne Gordon and I'm the Vice President for International Tax Policy at the National Foreign Trade Council ("NFTC"). I'm pleased to appear today to discuss our concerns with Australia's Public Country by Country Reporting ("CbCR") Legislation. [Schedule 4 of the *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024*].

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. We value work that focuses on establishing and maintaining international tax, transfer pricing and transparency norms that provide certainty to enterprises conducting cross-border operations.

NFTC members, including several with significant operations in Australia, are extremely concerned about this legislation. We would like to reiterate our concerns, especially with regard to Scope & Alignment with International Norms, Lack of Certainty on Exemptions and Compliance Burden and the potential impacts of this legislation on the business activities and investments in Australia of our members.

Scope & Alignment with International Norms

- The scope of the reporting is inconsistent and exceeds established international norms, including the stated goal of better alignment with the EU public CbCR. Aligning with the EU with respect to the scope of entities covered, the jurisdictions requiring separate disclosure, the content of the disclosure, the safeguard clause, and the timing of publication would ensure consistency and comparability for stakeholders.
 - For instance, the Bill defines related party revenue in a different manner -intra-country transactions are excluded in the Australian report, but are included in the existing Global non-public CbCR and EU Public Directive. This potentially creates five different definitions of Revenue within CbCR realm, leading to confusion, less transparency and ultimately undermining any intended benefit from such disclosures.
 - As Australia works toward implementing the Pillar Two Global Minimum Tax, payment of the Under Taxed Profit Rule or the "UTPR", may cause confusion as well - taxes paid under the UTPR are counted in the jurisdiction where they are remitted for CbCR purposes, not the jurisdiction which resulted in increased tax.
- Alignment within the bill is needed as well - the U.S. has a type of entity called an "S Corporation" which is a Corporation that is closely held, owned by individuals and whose income

is taxed in the hands of its individual owners similar to a Partnership. Financial information of an S-Corp is currently not public. The current scope of the bill understandably excludes individual partnerships in section 3D(1)(a) , but does not also exclude foreign groups where the ultimate parent is a constitutional corporation treated as fiscally transparent in its country of organization (where the taxes paid by individual shareholders would not be reported in the CbCR) - such as S corporations.

- I'd like to briefly turn to the proposed blacklist which requires additional reporting. We request that Australia aligns with the EU blacklist or develops and communicates a formal and transparent set of standards by which a foreign country will be included or excluded from this list. The World Trade Organization requires objective standards for blacklists or else it is considered discriminatory following a dispute put forth by Panama against Argentina.
- The scope of this legislation is crucial to its success. Failing to align with the EU and requiring reporting of entities which are not responsible for the tax due will lead to more confusion as opposed to clarity.

Lack of Certainty & Protection of Data

- The Bill lacks certainty and predictability by deferring without clear direction to arbitrary exemptions by the Australian Tax Office (“ATO”) Commissioner.
- NFTC remains very concerned about the lack of safeguards to protect against the disclosure of commercially sensitive data regarding business operations.
 - Without predictable and clear exemptions, disclosures could harm the competitive position of businesses, in both public and private industry, eventually resulting in market distortions and divestment, particularly when compared to competitors with no operations in Australia.
 - We urge reasonable protection of competitively sensitive information with an elective deferral of reporting for private companies for 5 years (in alignment with other public CbCR regimes). The deferral will also allow time for the government and the ATO Commissioner to better develop protections for competition.
- We continue to highlight concerns around the sensitivity of data requested for companies in the defense industry. We continue to be concerned that the Bill only contains a national security exemption mentioned in the Explanatory Memoranda and not explicitly in the legislative text.
 - The current framework does not offer a clear test or predictability for many industries, including defense and national security supply chains, including those relating to critical infrastructure necessary to further our shared interest in protecting sensitive data from adversaries.
 - Large defense contractors regularly participate in classified programs and projects with the U.S. Department of Defense and other government agencies around the world, including Canada, the United Kingdom, and Australia. The disclosure of classified equipment sales and associated service activities through revenue reporting metrics, tangible assets, and employee metrics provide information that, in the wrong hands, could compromise each country's national security and defense.
 - We recommend therefore that ATO provide two defined exceptions in the legislation:
 - A bright line test which allows multinational enterprise groups that conduct a majority of their business with the Department of Defence or government intelligence or security agencies to claim an automatic exemption from reporting any data other than identifying information. There is already precedent for such an exemption.
 - A second exemption for affiliated groups that conduct significant business (but not a clear majority) with the Department of Defence or government intelligence or security agencies (including defense and national security supply chains including those relating to critical infrastructure) should be allowed, with the approval of the ATO, to claim a similar exemption from reporting.

Compliance Burden & Data Publication

- The data required is not readily available to many in-scope businesses and will place an additional compliance burden at the same time as Australia and other countries are implementing the Inclusive Framework's Pillar Two regime.
- The reporting requirements of the Australian bill are more onerous than the EU public CBCR directive requirements. In some respects the design mirrors the much broader **voluntary** GRI reporting standard for public companies.
- In order to mitigate some of the additional compliance burden, NFTC recommends adopting the same standard format as the EU, delaying the effective date of these additional requirements by 12 months, and adopting a de minimis exception for low-revenue jurisdictions (and instead allow that income to be aggregated in the parent jurisdiction). A consistent format will avoid the unintended consequence of multiple versions of public CbCR, which may create confusion and undermine transparency.
- Companies should have the option to publish the data in the prescribed format on their own website as they may want to provide additional context or include the data within a wider Environmental, Social and Governance ("ESG") report. Additionally, clarification on the details of the maintenance of information on the Australian government website would be helpful. For example, the legislation should make clear how long the data will be maintained on the ATO website. The EU provides for a five-year visibility period at which point the data can be removed. We recommend Australia adopt a similar approach.

Impact on U.S. Multinationals

These concerns will have profound impact on Australia and investment of U.S. multinationals.

- Businesses are constantly analyzing future investments. Exceptionally burdensome policies with high compliance costs will deter future investment in Australia.
 - Compliance costs of doing business are already much higher in Australia than other similarly situated economies, leading to increased costs which are ultimately borne by Australian consumers.
- Creating a reporting regime with elements not required in any other global jurisdictions disincentivizes investment and punishes investors. It is important to reinforce that ATO **already** has access to these data points for tax compliance purposes.
- This bill is causing some NFTC members to consider complete divestment of longtime investments and/or restructuring operating through distributors which would reduce employment and increase costs for Australian consumers.
- For Defense companies and supply chains, (*i.e.*, companies engaged in defense industries including the provision of defense services and/or development of defense technologies), continuing to do business in Australia while having to disclose sensitive information related to the company's business with other allied nations will place the defense company in a difficult position with its defense customers outside of Australia.

Conclusion

NFTC has repeatedly expressed its concerns with publicly available CbCR data and the extent of disclosure required in this legislation. We urge reconsideration of the bill and we recommend that the bill be revised to align more closely with enacted international standards, such as the EU, provide clear exemptions, and reduce the compliance burden to avoid discouraging investment in the country and increase costs for consumers.

Thank you for the opportunity to appear today. I welcome any questions the Committee may have.