September 4, 2025

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Re: Practice Statement Law Administration 2025/D1 - Public Country-by-Country Reporting Exemptions

The National Foreign Trade Council (the "NFTC") is writing to provide comments on Practice Statement Law Administration 2025/D1 ("the Guidance") issued July 3, 2025. The NFTC appreciates the ATO's work to provide additional clarity and guidance on Public Country-by-Country Reporting ("CbCR") exemptions as requested in prior consultations. NFTC previously submitted comments in response to the Australian Taxation Office's ("ATO") April 2025 consultation on guidance requests for Schedule 4 of the Australian Government's *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures)* ("the Law").

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities, accounting for over $6 trillion in revenue and employing nearly 6 million people in the United States. We value work that focuses on establishing and maintaining international tax and transfer pricing norms that provide certainty to enterprises conducting cross-border operations.

General Comments

We welcome the Guidance which provides needed clarity on exemptions and request additional clarification on a number of issues. Most importantly, the NFTC reiterates our call for stronger safeguards for national security and sensitive business information. We also urge ATO to consider a more streamlined application process for exemptions, and, to the extent permissible under the law, closer alignment with international CbCR standards.

Exemptions

Exemptions are at the discretion of the Commissioner of Taxation as provided in the Law. In multiple prior comment submissions, NFTC highlighted concerns around the sensitivity of data requested in public CbCR for companies. The Guidance issued this month is a positive step, yet significant concerns remain regarding the practical viability of pursuing exemptions as stipulated.

Sensitive Business Data

NFTC remains concerned about the adequacy of safeguards for commercially sensitive information. More broadly, the apparent weight being applied by the ATO to the policy intent of the Law seems to minimize potential harms. The policy of public transparency is a clear objective in the Law. NFTC acknowledges that the ATO must consider the policy of the Law; however, the high weight given to this policy does not

strike the proper balance. The Law also specifically gives the ATO the power to provide exemptions. While commercially sensitive information was not automatically carved out of the Law, the Explanatory Memorandum confirms that disclosure which would "result in substantial ramifications for an entity (by an objective standard) by revealing commercially sensitive information" is a valid consideration.[1]

By applying public transparency as the overriding principle and stating that circumstances outside of the ordinary course are not sufficient, the Guidance fails to consider the unique circumstances of some privately held companies. For these companies, the disclosure of profits, losses, and other detailed information that is not otherwise publicly available would have a unique adverse effect on their competitiveness.

Additionally, the Guidance does not consider private, competitively bid project-based work. In many cases, these types of projects contractually prevent disclosure of revenue information. It would be useful if the ATO would consider including a further exceptional circumstance example related to commercial sensitivity where it is considered that a partial or full exemption should be provided.

Disclosing profit or loss and taxes accrued/paid would provide information from privately held businesses to its competitors. This information is not readily available or disclosed anywhere else and provides insight on how the business prices items and expansion plans. For some companies, this could disclose the structures of competitive bids and as such, adversely impact the business's ability to win future competitive bids against its competitors.

For instance, consider a foreign-headquartered privately held entity that works in a long-term project-based business (*e.g.*, engineering and construction) whose revenue and profits rely entirely on competitively bid large-scale project-based work, with projects lasting in general between 3-6 years. In this example, the foreign-headquartered private entity has successfully bid on and won a single long-term construction contract with a private customer in a foreign country that is a specified country in the Minister's determination (*i.e.*, it requires separate disclosure) and the entity has no other activity or sources of revenue in this foreign country. Under such a scenario, we believe disclosure of employee headcount, revenue from unrelated parties, profit or loss before income tax, income tax paid and income tax accrued associated with this foreign country would cause severe adverse ramifications for the business.

This information, which is not available anywhere else, would allow the business's competitors to understand the execution strategy and pricing adopted by the business to win the project and could be used to the private business's disadvantage in all future competitively bid long-term construction projects. In addition, disclosure of profit or loss before income tax, income tax paid and income tax accrued in this foreign country is also particularly sensitive from the perspective of the private business's relationship with its customer. Ordinarily, the customer would never have any visibility into the profit made by the private business from their project. Providing this information could severely strain the business's relationship with the customer, both on the current long-term project and from the perspective of winning repeat work with the customer. To increase its chances of success and improve customer relationships, the business may be forced to reduce its prices below levels that are optimal for the significant risks associated with large-scale long-term construction contracts. At a minimum, the ability of the business to

[1] Parliament of the Commonwealth of Australia. Explanatory Memorandum, *Treasury Laws Amendment* (*Responsible Buy Now Pay Later and Other Measures*) Bill 2024. https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7199_ems_68bf69be-dca1-4eb1-be21-83f568e443af/upload_pdf/JC013125.pdf;fileType=application%2Fpdf

succeed in the future would be severely impacted due to the additional knowledge that the private business's customers and competitors would now have solely as a result of Australia's public CbCR. We believe the above example should be considered an exceptional circumstance that warrants partial exemption from public CbCR requirements, and we would welcome the inclusion of this or a similar example as warranting partial exemption in the Guidance.

National Security

There is a serious risk of violating existing laws and/or inadvertent disclosure of sensitive data harming the national security interests of Australia and its allies, with the Guidance as drafted. The level of detail and specificity required for defense companies to submit an exemption request for a limited exemption would likely itself be a violation of national security-related laws in Australia, the U.S., or other countries allied with Australia, putting defense companies in an impossible compliance position reconciling these different laws.[2] Defense industry multinational enterprise ("MNE") groups typically enter into defense contracts that may contain nondisclosure agreements. Complying with Australia's CbCR requirements could force these MNE groups to breach these contracts.

Moreover, the authority to approve release of relevant contract information rests with the Contracting Officer and the Department of Defence in Australia or the U.S Department of Defense; neither the defense company nor the ATO is in a position to rule on whether the requested information in the public CbCR is sufficiently disguised by aggregation, as presented. The concerns around national security led the U.S. Department of the Treasury and the Internal Revenue Service to issue Notice 2018-31,[3] which significantly reduced and simplified the non-public CbCR requirements with respect to U.S.-parented groups that are "specified national security contractors." Given the U.S. government's position that the non-public OECD CbCR, submitted to and shared amongst tax authorities only, includes information relevant to national security, the U.S. government may not provide permission to defense companies to publish this information publicly.

In the event of limited exemptions, the remaining required information likely lacks the appropriate context and reference to be meaningful in furthering the goal of transparency, while still exposing defense companies and Australia to hostile actors' abuse of published information. Even seemingly unrelated business activities or entities of a defense industry company not engaged in national security could be misinterpreted as having national security implications. Publicly available data could be extrapolated, misused, or manipulated to disrupt the company's operations and undermine the critical missions supported by its defense programs.

Thus, NFTC requests an automatic class exception for National Security and Defense for each reporting period. The ATO should adopt an objective standard that MNE groups can apply to their facts. The objective standard should allow MNE groups that derive a majority of their revenues from goods and services that have a defense or national security purpose,[4] as defined in footnote 4, to claim an automatic

[2] As examples, see The Defence Act, Section 73A of Australia, or The Defense Federal Acquisition Regulation Supplement Subpart 252.204-7000 of the United States ("U.S.").

[3] Notice 2018-31: "National Security Considerations with Respect to Country-by-Country Reporting". The notice exempts national security contractors from comprehensive IRS Form 8975 filing requirements if more than 50 percent of its annual revenue, as determined in accordance with US GAAP, in the preceding reporting period is attributable to contracts with the Department of Defense or other U.S. government intelligence or security agencies.

[4] These revenues include contracts with the Department of Defence or government intelligence or security agencies of Australia and its allied governments (including Foreign Military Sales and direct military sales to allied governments). Due to the complexity in the supply of products and services with national security importance, we

exception from reporting any data other than identifying information (*e.g.*, company name, jurisdiction of incorporation, identifying number, address) similar to what is filed in the United States. When applying for an exemption, these companies would file the identifying information along with a certification that it meets the ATO objective standard. As currently envisioned by ATO, the exemption process is a yearly, time-consuming exercise that increases compliance costs year over year.

Similarly, a second exemption for affiliated groups that derive a significant share of their revenues (but not a clear majority) from goods and services that have a defense or national security purpose should be allowed, with the approval of the ATO, to claim a similar exception from reporting. For this exception, ATO should develop an administrative mechanism for ATO to revisit the decision rather than requiring MNE groups to seek time-consuming and costly judicial remedies.

Once either of these exemptions is approved, the exception should carry over from year to year until the MNE has a change in facts. NFTC understands that ATO may be considering a 5-year cycle for exemptions. In that instance, we would request that during the cycle "renewal," only the identifying information and certification that the ATO objective standard is met would be needed to permit another 5-year cycle.

NFTC and its members continue to urge the ATO to specify exemptions to be granted to a class of companies that serve government customers in Australia and its allied countries in areas of national security and defense. ATO's current guidance puts a significant burden on companies to seek an annual exemption and creates considerable risk and uncertainty regarding a defense company's compliance position. It will also be a tremendous resource drain on the ATO staff to review, assess, and administer all of these exemption requests on an annual basis. Therefore, NFTC strongly advocates for a permanent exemption, or at a minimum an automatic multi-year exemption, for defense companies, to put ATO resources to more effective uses and afford stronger protection to companies in the defense industry and their respective government customers.

Exemption Examples & Guidance Specifics

In Example 4 of the Guidance, the fact pattern does not describe which parties have the increased bargaining power to charge them higher fees. We would appreciate clarification as to whether the ATO is referring to consultants/employees the business uses to provide the professional services in the foreign country. Additionally, it would be useful if the ATO could elaborate in Example 4 on the basis for why the ATO officer under that particular fact pattern did not consider harm or circumstances to be an "exceptional circumstance" warranting partial exemption. Alternatively, if Example 4 is intended to illustrate an example where the ATO officer does not reach an ultimate conclusion and instead would discuss this further with the applicant and be open to more specific information about the harm likely to be caused by the increased bargaining power, then it would be useful if this could be clarified.

Paragraph 75 of the Guidance states that only one application for exemption from an entity will be decided for each reporting period. However, it is conceivable that a company could have multiple reasons to request an exemption. We request guidance from the ATO on how a company should proceed when multiple reasons exist for a full or partial exemption to be granted. Additionally, guidance is requested for

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request that the definition more broadly cover products and services with a defense or national security purpose. That is, goods and services which are used by defense or intelligence services, subject to export control or related regulations designed to protect national security interests, or where the disclosure of information related to their supply is prohibited by law to protect national security interests.

instances where the reason or fact pattern for making the application differs across different regions and/or requires different pieces of information. In particular, will these justifications all be included in the same single application or will the Public CbC Reporting Exemption Application Form be sufficiently flexible to allow what is essentially multiple applications on different grounds to be included in the same form?

Paragraph 9 of the Guidance states that it does not apply to an exemption for classes of entities to be exempted by regulation or specified in a legislative instrument. We request that the ATO clarify what process/procedure will apply for those taxpayers wishing to apply for an exemption on the basis of a class of entity.

Black List

In general, we believe the specified countries list should not include countries with which Australia has a comprehensive tax treaty allowing for the exchange of information and administrative assistance. This would support excluding Singapore and Switzerland from the specified countries list, as well as territories that are part of the United States.

We understand that the ATO is adopting a 'minister' decision-based criteria for determining the list of countries to be published within the public CbCR. The list of "specified countries" provided for public CbCR is significantly longer than that of the European list. This gives rise to an even further increased risk in relation to disclosures that could impact national security.

A principal consideration should be given with regard to the geographic location of many of the "specified countries", and how they could be of strategic importance from a defense perspective. Because Australia's list of "specified countries" is significantly longer than that of the European list, it ends up covering a number of strategically important locations.

Format

Given that many companies reporting in Australia also need to report in the EU, we request that ATO align the format with that of the EU Public CbCR. We recognize there are some additional data points required by the Australian version. However, the flexibility of the EU format with various sections of explanation should also suffice to include the Australian requirements.

Another concern is the lack of alignment of the definitions of measures to be published on a global basis. For example, the Australian definition of related party revenue excludes domestic transactions, while the EU definition is a combined 'all in' measure of related and unrelated party revenue. To the extent possible, we request that definitions be aligned or that the ATO detail the definitions on their website, to provide clarity on why numbers may differ from other public CbCR regimes.

Conclusion

The Guidance provides a helpful framework to understand ATO's exemption process and proposed requirements. We look forward to additional guidance to further refine open issues and reevaluate the balance of public transparency and the need to protect sensitive taxpayer data. NFTC requests class and industry-based exemptions, as well as a streamlined exemption process. As currently envisioned, a case-by-case, year-by-year exemption system is woefully insufficient to protect national security concerns. We appreciate consideration of our comments and look forward to a continued dialogue as ATO finalizes CbCR guidance.