

## ***LI 2024/27 - Explanatory statement -***

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Minister for Competition, Charities and Treasury**

#### *Taxation Administration Act 1953*

#### *Taxation Administration (Country by Country Reporting Jurisdictions) Determination 2024*

Subsection 3DA(4) of the *Taxation Administration Act 1953* (the Act) provides that the Minister may, by legislative instrument, make a determination specifying jurisdictions for the purposes of subparagraph 3DA(1)(d)(ii) of the Act.

Subparagraph 3DA(1)(d)(ii) of the Act provides that certain country by country (CBC) reporting parents must publish the matters listed in subsection 3DA(3) for the reporting period in respect to a jurisdiction specified in a determination under subsection 3DA(4), if the CBC reporting group operates in that jurisdiction. The matters listed in subsection 3DA(3) is selected tax information relating to the CBC reporting group.

The purpose of the *Taxation Administration (Country by Country Reporting Jurisdictions) Determination 2024* (the Determination) is to specify the jurisdictions for which the CBC reporting parent must publish selected tax information on a CBC basis, if the CBC reporting group operates in that jurisdiction.

Under sections 3D and 3DA of the Act, certain large multinational enterprises (defined as CBC reporting parents) are required 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.

A public CBC reporting regime enhances multinational tax transparency by improving the quality of tax information disclosed by multinationals in the jurisdictions in which they operate. Better corporate tax transparency helps address information asymmetries to support well-functioning markets and aids investment decisions. This information also improves the public debate on the appropriateness of current multinational taxation settings, by assisting the public to better assess how an entity's operations affect its tax rate, including total income taxes paid.

The Act does not specify any conditions that need to be satisfied before the power to make the Determination may be exercised.

An exposure draft of the Determination and explanatory statement, alongside an exposure draft of the primary legislation and explanatory memorandum establishing the public CBC reporting regime, were released for public consultation between 12 February 2024 and 5 March 2024. There were 39 written submissions received in response to the consultation, mainly in relation to the primary legislation. The feedback received from consultation has been taken into account in finalising the Determination. The submissions received in response to the consultation, excluding confidential submissions, are publicly available on the Treasury website.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to disallowance and sunseting.

The Determination commences on the later of the day after it is registered on the Federal Register of Legislation and the day Schedule 4 to the *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Act 2024* (BNPL Act) commences. However, the Determination doesn't commence at all if Schedule 4 to the BNPL Act does not commence.

Details of the Determination are set out in Attachment A.

A statement of Compatibility with Human Rights is at Attachment B.

The Office of Impact Analysis has been (OIA) has been consulted (OIA ref: 22-02534) and agreed that an Impact Analysis is required. The full text of the Impact Analysis is available at <https://oia.pmc.gov.au/published-impact-analyses-and-reports/multinational-tax-transparency>. An addendum to the Impact Analysis is at Attachment C.

**Details of the Taxation Administration (Country by Country Reporting Jurisdictions) Determination 2024**

This attachment sets out further details of the *Taxation Administration (Country by Country Reporting Jurisdictions) Determination 2024* (the Determination).

**Section 1 – Name**

This section provides that the name of the Determination is the *Taxation Administration (Country by Country Reporting Jurisdictions) Determination 2024*.

**Section 2 – Commencement**

This section provides that the Determination commences on the later of the day after it is registered on the Federal Register of Legislation and the day Schedule 4 to the *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Act 2024* (BNPL Act) commences. However, the Determination doesn't commence at all if Schedule 4 to the BNPL Act does not commence.

**Section 3 – Authority**

This section provides that the Determination is made under the *Taxation Administration Act 1953* (the Act).

**Section 4 – Definition**

This section provides definitions for the purposes of the Determination.

**Section 5 – Country by country reporting jurisdictions**

This section sets out the jurisdictions for which a CBC reporting parent must publish selected tax information on a CBC basis for, if the CBC reporting group operates in that jurisdiction. The CBC reporting parent must publish the information for the specified jurisdictions for the reporting periods listed in the table.

The jurisdictions specified in the Determination reflect current trends of multinationals operating in Australia and the arrangements they engage in with offshore members of the broader multinational group – that is, the international related party dealings of multinational entities. This includes a range of factors, including the following:

- quantum of international related party dealings;
- cross-border financing, including loan arrangements;
- intangibles arrangements;
- subsidiary structures; and
- other economic factors, such as employee numbers.

The above factors are general considerations and also have regard for the scope and nature of economic activity in the jurisdiction.

This section includes a range of jurisdictions, reflecting Australia's expansive approach to public CBC reporting. A distinction is made between those jurisdictions that Australia has a comprehensive international tax agreement with and those it does not. This distinction indicates where tax agreements support international related party dealings between certain specified jurisdictions and Australia, reflecting that these tax agreements operate to facilitate investment, trade, movement of technology and movement of personnel between jurisdictions.

The list of jurisdictions with which Australia has a comprehensive international tax agreement reflects the enduring relationship of broad cooperation between Australia and the specified jurisdiction's tax authorities. These jurisdictions generally demonstrate long-standing commitments to international tax dialogue and have been assessed, through the Organisation for Economic Cooperation and Development's peer reviews on base erosion and profit shifting, to be in line with international tax standards.

Other jurisdictions are specified on the basis of Australia's observed international related party dealings of multinationals operating in Australia, notwithstanding these jurisdictions' respective approaches to international tax standards.

## **ATTACHMENT B**

### **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

#### ***Taxation Administration (Country by Country Reporting Jurisdictions) Determination 2024***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

The purpose of the *Taxation Administration (Country by Country Reporting Jurisdictions) Determination 2024* is to specify jurisdictions for which a country by country (CBC) reporting parent must publish selected tax information on a CBC basis for, if the CBC reporting group it is a member of operates in that jurisdiction.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms, as it applies to multinational entities not individuals.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Public Country by Country Reporting: Impact Analysis addendum**

**Introduction**

On 22 June 2023, the Government introduced into Parliament the *Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023*. The Impact Analysis accompanying the Bill addressed the three tax transparency elements of the Government’s election commitments (as announced in the October 2022-23 Budget), including considerations which informed the public CBC measure, even though only one transparency measure was included in the Bill. This reflected the Government’s commitment to transparency on the policy development process.

This is an addendum to the original Impact Analysis. It includes updated information on the public CBC measure, reflecting the key developments of the revised policy settings in line with the Government’s announcement to defer the introduction of the measure to allow for further industry consultation on elements of the policy (the Assistant Minister’s media release of 22 June 2023 refers).

**Timeline of events**

<b>Date</b>	<b>Description</b>
22 June 2023	Government announcement to continue to engage with stakeholders.
August 2023	Treasury targeted (confidential) consultation on potential policy changes.
13 December 2023 (MYEFO)	Government announcement deferring the start date to 1 July 2024 (from 1 July 2023).
12 February – 5 March 2024	Public consultation on the revised exposure draft legislation.
March – May 2024	Government consideration of stakeholder feedback.
May 2024	Introduction of revised legislation.

**Public consultation – summary**

Treasury consulted publicly on the revised exposure draft legislation from 12 February to 5 March 2024. 42 written submissions were received (including 5 confidential) – the public submissions are available on the Treasury website. Treasury held in-person meetings with individual entities, industry representatives (domestic and foreign), and foreign government officials.

In general, civil society stakeholders continued to support the policy intent to improve corporate tax transparency. The business community broadly welcomed the revised draft and acknowledged the closer alignment with the EU regime – while they continued to claim the EU regime should be adopted (on the basis this would reduce compliance costs for large multinationals), there was a recognition the revised draft largely addressed

previous claims the initial measure was too broad and would give rise to unintended consequences (excessive compliance costs and taxpayer confidentiality concerns). However, some stakeholders continue to claim the cost of complying with public CBC outweighs any public benefit, noting that the ATO already has access to a lot of this information and that without additional context the public would have limited ability to interpret the data.

There were three broad themes emerging from the consultation: clarity on the exemptions provision, clarity on the specified jurisdictions list (disaggregated public CBC reporting), and preferences for the EU regime. The Government responded to this feedback principally via further guidance in the explanatory materials. Legislative changes were relatively minor, limited to technical drafting changes to provide additional clarity on interpretation.

### **Exemptions provision**

The draft legislation provides a provision allowing entities to request an exemption from publishing particular kinds of information. Corporate stakeholders requested further clarity on how this would apply, particularly regarding commercially sensitive information.

The Government responded to this feedback by augmenting the explanatory memorandum to include specific examples which the Commissioner (ATO) would have regard for in considering exemption requests. The legislation maintains a coherent principles approach.

### **Specified jurisdictions – disaggregated CBC reporting**

The draft legislation was revised to narrow the scope of jurisdictions in which MNEs would need to disclose tax information. The legislation was also revised to allow entities the option to voluntarily publish disaggregated reporting for all jurisdictions in which they operate in, or otherwise report on an aggregated ‘rest of the world’ basis. The original policy settings required entities to report on all jurisdictions in which they operate.

Civil society stakeholders suggested broadening the draft list to include Ireland, the Netherlands, Luxembourg, the UAE, Puerto Rico and Trinidad and Tobago (as examples). Corporate stakeholders sought further details on the criteria underpinning the list, asserting that the list should be narrowed in line with the EU approach.

Ultimately, the specified CBC jurisdiction list is a Ministerial determination. The draft list of jurisdictions is informed by the ATO’s specified country list (per the international dealings schedule for international transactions). It reflects an Australian perspective having regard for our tax settings and multinational entities’ observed arrangements, and it is acknowledged that the proposed CBC list is broader than the EU. For public CBC purposes, a number of factors would be considered in finalising the list, including: trade and investment flows relative to contracted international related party transactions, employee numbers in the offshore jurisdiction (relative to the related party expenditure/income flows) and the type of assets subject to the related party transaction (e.g. royalty/intangible or interest payments). Jurisdictions in scope of the EU public CBC rules were not included in the list, reflecting a complementary approach to global public CBC rules.

The Government intends to respond to stakeholder feedback via the explanatory statement supporting the Ministerial determination (expected to be signed after legislation is in place).



## **EU regime v Australian regime**

Corporate stakeholders suggested the Government should adopt the EU regime, claiming the EU regime is an adequate model for public CBC reporting. This would include aligning with the EU data labels, exemption process, reporting process, and specified jurisdiction list. Stakeholders claimed this would minimise compliance costs, noting Australia's proposed approach would be duplicative.

The Government responded to this feedback via minor amendments to the legislation, and a number of text amendments to the explanatory memorandum to provide further clarity on the context of the Government's policy and the rationale for adopting the GRI's model as the base.

## **Proposed policy revisions – summary**

	<b>Initial policy setting</b>	<b>Revised policy setting</b>
Materiality threshold	N/A.	Entities will only be subject to public CBC reporting in Australia if they have \$10 million or more of Australian sourced income (aggregated turnover basis).  This responds to stakeholder feedback to better align with the EU public CBC regime. It ensures MNEs with a small Australian presence are not subject to the rules.
Disaggregated CBC reporting (specified jurisdictions)	CBC disclosures applied to all jurisdictions an entity operated in.	Entities will only need to publish tax disclosures on a country-by-country basis for specified jurisdictions, as determined by the Minister tax. Entities will have the option to voluntarily publish disclosures for other jurisdictions in which they operate, or on an aggregate (rest of world) basis.  This responds to stakeholder feedback to better align with the EU public CBC regime. It helps to minimise compliance costs, while establishing a complementary global approach to public CBC.
Data label disclosures	Tax disclosures in line with the Global Reporting Initiative (207 tax standard), with 4 additional data labels (related party expenses, effective tax rate, and the	The revised legislation removes data disclosures on: <ul style="list-style-type: none"><li>- related party expenses,</li><li>- effective tax rate calculation,</li><li>- the listing of intangible assets, and</li><li>- the valuing of intangible assets</li></ul>

	listing and valuing of intangible assets).	This responds to stakeholder feedback to better align with the EU public CBC regime. The Bill retains the GRI tax disclosures.
State date	1 July 2023.	1 July 2024 This responds to stakeholder feedback to better align with the EU public CBC regime.

### **Impacts associated with revised approach**

The revised policy settings (above) seek to balance the policy intent of delivering a meaningful enhancement to corporate tax transparency with reducing compliance cost imposts for taxpayers. The policy revisions align more closely with the EU regime which is expected to lower compliance and transition costs for taxpayers (in practice they reduce the disclosure obligations on multinationals) while the augmented guidance in the explanatory materials is expected to address taxpayers' concerns on disclosing commercially sensitive information.