



Ms. Kathryn Davy, Branch Head
MNE Tax Integrity Branch
By email: TaxIntegrity@TREASURY.GOV.AU

Wednesday May 10, 2023

Dear Ms. Davy,

The Digital Industry Group Inc. (DIGI) thanks you for the opportunity to provide our views on the Treasury's consultation on draft legislation to implement public country-by-country reporting (PCBCR).

By way of background, DIGI is a non-profit industry association that advocates for the digital industry in Australia. Our vision is a thriving Australian digitally-enabled economy that fosters innovation, a growing selection of digital products and services, and where online safety and privacy are protected. DIGI is a key Government partner in efforts to address online harms, data and consumer protection online and to grow the digital economy, through code development, partnerships and advocacy for effective and implementable approaches to technology policy.

DIGI recognises the Australian's Government's desire to enhance tax transparency and shares the Government's commitment to fair taxation in a globalised digital economy. We encourage the Australian Government's support of international efforts to ensure multinational enterprises (MNEs) are subject to fair and consistent international taxation arrangements under the OECD's Base Erosion and Profit Shifting (BEPS) process, and the BEPS 2.0 (Pillar One and Pillar Two) work.

DIGI supports a coordinated global approach to public tax reporting, with consistent data requirements, terminology and definitions. In particular, country-by-country reporting has a cross-border and extraterritorial impact which warrants coordination at international level. We recommend the Australian Government focus its efforts in the first instance on developing such an approach through the OECD, taking into account the outcomes and impact of the BEPS process.

DIGI is concerned that the proposed PCBCR regime goes beyond the international standards developed through the OECD process (in which Australia has participated), the EU Country-by-Country reporting regime through its requirements for additional disclosures and the Global Reporting Initiative's Sustainability Reporting Standard 207. We are concerned about the following departures from these processes in the proposal:

- The Australian proposals could lead to the public disclosure of commercially sensitive information, in opposition to the emphasis that the OECD process puts on ensuring information is available to tax authorities yet kept confidential. It also overrides the current agreed mechanisms in the OECD BEPS process to safeguard confidentiality and appropriate use. We also note that the Australian Tax Office and many of its overseas counterparts currently have access to country-by-country reporting. Making these disclosures public does not add to meaningful transparency and risks being misinterpreted or misused.
- Under the Australian proposal, companies are required to provide significant additional information publicly, increasing the risk that commercially sensitive information is disclosed. In

particular, we are concerned about the disclosure requirements on all intangible assets and their valuation, and the disproportionate impact this may have on digital businesses and operations.

- DIGI also cautions that the proposed timing, starting in under two months on July 1 2023, may not enable due time to introduce efficient compliance mechanisms that ensure accuracy. It is again inconsistent with the EU approach, where the disclosure regime there is not expected to be fully implemented until 2026.

While we recommend the Australian Government focus its efforts in the first instance on developing an approach through the OECD, should it proceed with PCBCR in the meantime, we recommend:

- A safeguard that allows companies to defer publication of confidential and commercially sensitive information for five years, in line with the EU approach, along with safeguards on the appropriate use and interpretation of this information.
- Removing the requirement to publicly disclose a list and the value of tangible and intangible assets.
- That an MNE group, and any Australian group entity or Permanent Establishment (PE), be deemed to have complied with Australia's reporting requirements if they include the information required under the EU's PCBCR framework for the Australian component entity or PE.
- Defer reporting requirements until the income year commencing on or after July 1 2024 at the earliest, in order to better align with the EU's timeline, and taking into account that the Pillar Two ETR calculations are not required for 2023, and the first Pillar Two return for 2024 will not be due until June 2026.

While we appreciate the Government's ambition in ensuring tax fairness, overriding agreed international standards with an Australia-specific approach may inadvertently create business incentives to invest and operate in other jurisdictions, and disincentivise investment by foreign firms in Australia and international expansion by Australian firms overseas.

We thank you for your consideration of the matters raised in this submission. Should you have any questions, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read 'Sunita Bose'.

Sunita Bose
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