

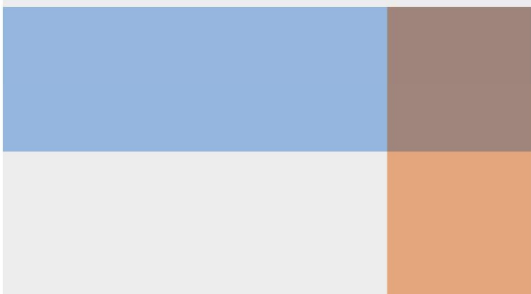


Policy Impact Analysis

Multinational tax integrity package

Multinational Tax Transparency

June 2023



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Introduction / Executive Summary

The Government, as part of its election commitment platform, announced a multinational (MNE) tax integrity package to address MNE tax avoidance and to improve transparency through better public reporting of MNEs' and corporate entities tax information. These changes form part of the Government's overall commitment to repair the Budget and improve the fairness and integrity of the tax system.

Tax integrity issues arise due to MNEs adopting tax planning practices which take advantage of the differences between jurisdictions' tax systems to minimise their tax paid, typically by moving the incidence of taxation from a high taxation jurisdiction to a low taxation jurisdiction, or by avoiding a taxable presence in high taxation jurisdictions altogether. This can be aided by opaque tax disclosures.

Increased tax transparency can help to deter corporate entities from entering into arrangements to minimise their tax paid by 'holding companies to account' on their activities in a jurisdiction. This contributes to the welfare of Australian society. Enhanced public scrutiny through increased tax transparency allows for a better assessment of taxpayer activities, and the impact of those activities on the economy, including the amount of tax paid. Transparency, in this regard, is a key factor underpinning the integrity of the tax system.

This impact analysis addresses the tax transparency element of the Government's election commitment, as announced in the October 2022-23 Budget, to require:

- the public reporting of tax information on a country-by-country (CbC) basis, targeting MNEs defined as CbC reporting entities¹, with annual global income of A\$1 billion or more);
- Australian public companies to disclose information on the number of subsidiaries and their country of tax domicile; and
- tenderers for Australian government contracts to disclose their country of tax domicile.

This impact analysis considers the way this commitment (and specific elements within) should be implemented, with reference to the status quo. It has been informed by two rounds of public consultation, including on exposure draft legislation, and targeted consultation. Stakeholder feedback on the implementation options focused on the cumulative compliance burdens that arise from increased transparency. The final option to be implemented by Government reflects this feedback.

This impact analysis is principally a qualitative assessment, assessing the trade-offs between enhanced tax transparency/better data availability with compliance burdens from this increase in reporting. It concludes that introducing a legislative framework for public CbC reporting and corporate subsidiary disclosures is an appropriate tool for increasing tax transparency, to better address information asymmetries with corporate tax disclosures, although there may be benefit in further consultation with industry on elements of the public CbC measure. Amendments to policy design after stakeholder consultation seek to minimise compliance burdens and still provide meaningful disclosure.

¹ CbC reporting entities are a subset of Significant Global Entities

The problem

At a high-level, the problem is about addressing information asymmetries in corporate tax arrangements with a specific focus on MNEs and large businesses tax disclosures, to help address tax avoidance. This contributes to the Government's broader intent to ensure taxation laws operate to raise the intended revenue.

Following the 2008 Global Financial Crisis, corporate tax avoidance has been a matter of considerable public attention², giving rise to revelations of aggressive tax planning by MNEs and concerns about whether MNEs are engaged in unacceptable corporate tax avoidance, aided by lax tax transparency disclosures.

Tax avoidance is where a business artificially structures its activities to avoid tax. Typically, this will involve structures designed to avoid attributing profits to, or limit a business's taxable presence in, a high tax jurisdiction by taking advantage of differences between countries' tax systems to create opportunities for entities to minimise their tax. MNEs are well placed to take advantage of these differences; they have greater capacity to structure corporate groups and commercial transactions so that income is taxed in low tax jurisdictions. The OECD estimates that base erosion and profit shifting (BEPS) practices cost countries 100-240 billion USD in lost revenue annually³.

In the Australian context, Australia's relatively high corporate tax rate, the increasing prevalence of highly mobile intangible assets (e.g., intellectual property), and the increased mobility of economic activity generally, can provide MNEs with incentives and the opportunity to structure arrangements to artificially lower their tax. This is different to tax minimisation where a business legitimately applies the tax concessions available to it. There are often valid reasons for a business paying no tax.

Transparency builds trust in tax systems and enhances tax morale⁴ by helping to deter MNEs from entering into arrangements to lower their tax paid. Enhanced public scrutiny from increased tax transparency is intended to 'hold companies to account' on their activities in a jurisdiction, to support a better assessment of MNEs' activities in Australia, and the impact of those activities on the economy, including whether they pay an appropriate amount of tax.

Australia's current approach to tax transparency is comprised of three core limbs: the ATO Corporate Tax Transparency Report⁵, the Board of Tax Voluntary Tax Transparency Code and the (confidential) OECD CbC reporting BEPS minimum standard. There are issues with each limb, as outlined below.

The availability of entity tax information is only likely to encourage trust if the community can access, understand, and use the information⁶. That is, transparency regimes which give rise to mixed messaging detracts from an informed understanding among the public of an entity's tax position and limits the ability for civil society and the public to scrutinise corporate behaviour and assess whether it meets public expectations. For example, misunderstandings on the valid role that tax losses play in determining an entity's tax position⁷.

2 Economic Modelling, 2015, Volume 44, The Impact of financial distress on corporate tax avoidance spanning the GFC: evidence from Australia, pp 44-53

3 <https://www.oecd.org/tax/beeps/>

4 Global Initiative for Fiscal Transparency, 2022, <https://blog-pfm.imf.org/en/pfmblog/2022/10/developing-and-using-global-tax-transparency-principles>

5 <https://www.ato.gov.au/business/large-business/corporate-tax-transparency/>

6 The World Bank, Innovations in Tax Compliance: Building Trust, Navigating Politics, and Tailoring Reform, 2022, <https://openknowledge.worldbank.org/server/api/core/bitstreams/7225ce2e-99d7-50b7-9ae7-a640a95ae2c0/content>

7 The ATO's Corporate Tax Transparency report, released annually, generates significant interest within the community, with commentators typically focussing on entities reporting a nil corporate tax liability. While

Transparency is also dependent on verifiable data. While the ATO's Corporate Tax Transparency Report is based on information sourced from tax return information, the Board of Taxation's Voluntary Tax Transparency Code (endorsed in the 2016-17 Budget to improve corporate tax transparency disclosures in Australia)⁸, has been criticised by groups who have raised questions regarding the integrity of the information published voluntarily by companies⁹. The voluntary nature of the report has also resulted in low rates of adoption¹⁰.

The OECD's CbC reporting framework is a BEPS Action minimum standard, adopted by all OECD countries to support tax administrations in the high-level detection and assessment of transfer pricing and other BEPS-related risks, and is subject to confidentiality restricting what data can be published. While the OECD publishes high-level, anonymised statistics on the data collected from the OECD CbC reports (to support the economic and statistical analysis of BEPS behaviour and of MNEs in general), there are several limitations that affect the quality of the data, such as the data being too aggregated¹¹ and source/microdata issues affecting comparability of data across jurisdictions¹².

The issues outlined above – limited transparency, consistency and accessibility – with Australia's existing tax transparency regime informed, in part, the Government's election commitment to improve tax transparency. The other guiding element was recent international developments, namely, the European Union's (EU) decision in 2021 to legislate a public CbC reporting regime to increase transparency in relation to the activities of multinational undertakings and to enable the public to assess the impact of those activities on the real economy¹³.

The EU's move to mandate public CbC reporting reflects the shifting public expectations on MNE tax transparency¹⁴. However, the EU approach currently only provides for CbC reporting in respect of EU member states and EU listed non-cooperative jurisdictions. The 'rest of world' activity is reported on an aggregated basis, limiting economic analysis of MNE BEPS risks, including in Australia.

There is a risk, however, that enhanced tax disclosures will not effectively address concerns about unacceptable corporate tax avoidance¹⁵. This arises from the trade-off between the compliance burden for MNEs from increased tax transparency and increased (improved) data availability for the economic analysis of BEPS.

An effective tax transparency regime should balance the 'public good' element of improved transparency while minimising burdens on the taxpayer (including having regard for MNEs' commercially sensitive information and continuing to support investment intentions in Australia).

the information in this report is sourced from tax return information, it excludes various tax return label items, such as tax losses information, from being disclosed. The exclusion of label items can hinder the general community's understanding of the tax affairs corporate tax entities, resulting in (at times) a misinformed public discourse on corporate taxation.

8 <https://taxboard.gov.au/current-activities/corporate-tax-transparency-code-and-register>

9 Board of Taxation, 2019, <https://taxboard.gov.au/sites/taxboard.gov.au/files/migrated/TTC-Consultation-Paper-final.pdf>

10 ATO and Treasury data: there are approximately 200 signatories to the Code out of an estimated cohort of over 3,000 entities (that could be reporting under the Code).

11 OECD, 2022, <https://www.oecd.org/tax/tax-policy/corporate-tax-statistics-country-by-country-reporting-FAQs.pdf>

12 OECD, 2022, <https://www.oecd.org/tax/beps/common-errors-mnes-cbc-reports.pdf>

13 Official Journal of the European Union, 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021L2101>

14 KPMG, 2023, <https://kpmg.com/xx/en/blogs/home/posts/2022/11/esg-scrutiny-shines-spotlight-on-tax-transparency.html>

15 Accounting and Business Research, 2019, Volume 49, Issue 5: International Accounting Policy Forum, pp, 565-583

Case for government action/objective of reform

Tax avoidance is a broad problem and can be addressed via targeted integrity changes and increased tax transparency. The increased transparency limb addresses information asymmetries to better ensure increased transparency, consistency and accessibility of tax information.

The Government's election commitment to increase tax transparency is part of a broader legislative package to ensure multinationals and corporate entities pay the appropriate level of tax.

The objective of this policy is to introduce targeted and balanced tax transparency initiatives directed at MNEs and corporates, to deliver improvements in the quality and comparability of tax disclosures, strengthen tax transparency, and improve the flow of useful information to the community, to support economic analysis of BEPS.

This is best achieved through legislative changes, rather than a voluntary approach. A legislative approach will ensure more consistent data in relation to the activities of MNEs and corporate entities, leading to better data analysis. This will assist the public to assess the impact of corporate activities on the real economy, which helps build community trust in the tax system. A legislative approach will also support better taxpayer compliance with the changes, than via a voluntary framework.

The Government's announcement of its public country-by-country reporting measure, was informed by international initiatives, namely the EU's decision in 2021 to legislate a public CbC reporting regime. Similarly, the Government's corporate subsidiary disclosure measure is informed by legislative changes in the UK in 2016.

The expected outcome from legislative changes targeting improved transparency is a moderation of corporate behaviour towards less aggressive tax planning. This will contribute to reducing the large corporate groups income tax gap – reflecting that the adoption of transparency measures, as part of a suite of legislative reforms, supports increased tax compliance/tax payable¹⁶.

However, to be effective, increased tax transparency should balance public accessibility/better data while not imposing excessive compliance costs on corporate taxpayers and protecting taxpayer sensitive information. That is, taxpayers (particularly foreign incorporated entities) not complying with the new disclosures would detract from the policy intent of improved transparency.

Policy options

Option 1: Maintain existing arrangements

This option would involve no change to Australia's tax transparency framework. That is, corporate entities would continue to publish selected tax information using different reporting metrics and standards, and in different reporting contexts, with varied levels of public accessibility.

¹⁶ ATO, 2022, <https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Tax-gap/Large-corporate-groups-income-tax-gap/>

Option 2: Implementation of the Government's election commitment to enhance tax transparency reporting

This option would address information asymmetries with the current tax transparency regime by enhancing the public reporting requirements of MNEs and public companies operating in Australia via:

- the public reporting of tax information on a country-by-country basis by MNEs¹⁷,
 - This will support quantitative benchmarking of an entity's behaviour using consistent information, by ensuring the tax information reported is standardised, publicly accessible and readable (i.e. relatively easy to interpret).
- Australian companies disclosing information on their subsidiaries, and
 - This measure was developed in place of the Government's originally announced election commitment that companies disclose to shareholders their business in a jurisdiction with a tax rate less than 15 per cent), in response to stakeholder feedback (see consultation section).

Separately, this option would also:

- require tenderers for Australian government contracts (worth more than \$200,000) to disclose their country of tax domicile.
 - The \$200,000 value is an existing threshold in the Commonwealth Procurement Framework. It is the second highest threshold.
 - This element does not require legislative amendments and will instead be implemented via administrative changes to Commonwealth Procurement Framework material.

Requiring tenderers to disclose their tax domicile is a small part of the Government's overall intent to enhance the information that entities disclose in certain circumstances.

Cost benefit analysis / Impact analysis

Option 1 – status quo

Maintaining the status quo would result in no change to corporate tax disclosures. It would also mean Australia's tax transparency framework is not responding to global developments towards greater transparency and accountability on corporate activity, particularly from large business. Compliance costs are assumed to be neutral under this option.

¹⁷ Defined as CbC reporting entity, generally an entity with annual global income of A\$1 billion or more (Subdivision 815-E of the *Income Tax Assessment Act 1997*). Further information on CbC reporting can be found at: www.ato.gov.au/business/international-tax-for-business/in-detail/transfer-pricing/country-by-country-reporting/

Option 2 – implementation of election commitment

Public country-by-country reporting

The introduction of a public CbC regime is intended to support better tax compliance and help ensure taxation laws operate to raise the intended revenue. Public CbC reporting is intended to operate in parallel with other measures to address tax avoidance risks.

While increased tax transparency works to curb aggressive tax behaviour and will contribute to closing the gross tax gap of large corporates (estimated at \$4.6 billion, 2019-20)¹⁸, the benefit impact of public CbC reporting is primarily a qualitative assessment – this form of impact analysis is also reflected in the EU’s assessment of public CbC reporting.

Public CbC reporting contributes to the welfare of Australian society, more broadly, by enhancing the public scrutiny of corporate income taxes borne by MNEs. This helps to foster increased corporate transparency and responsibility, which, in turn, builds community trust in the tax system.

Enhanced public scrutiny works by ‘holding companies to account’ on their activities in a jurisdiction and supports a better assessment of MNEs’ activities in Australia and the impact of those activities on the economy, including whether they pay an appropriate amount of tax. As the EU noted when they introduced their public CbC reporting directive, “such public scrutiny is necessary to promote a better-informed public debate regarding, in particular, the level of tax compliance of certain multinationals...and the impact of tax compliance on the real economy”¹⁹. The same applies in the Australian context.

This increase in corporate income tax transparency also works to serve the general economic interest by providing for a safeguard for investors and other third parties generally – for example, through more informed and accurate information to assess capital investments. For companies, the increased transparency can lead to a clearer risk profile and an enhanced reputation, which would support better access to capital.

The option to prescribe this reporting requirement in legislation is in keeping with international trends, reflecting the shift towards legislating transparency reporting frameworks – such as the EU’s directive on public CbC. A legislative approach ensures standardised information disclosures, verifiable data and provides that the data is published in a central location. This enhanced data set will support better economic analysis of BEPS risks contributing to a more informed discourse on tax settings in Australia, including whether the tax laws are operating as intended.

While public CbC will be a new disclosure regime and will contribute to some compliance costs, these costs can be justified given the public good outcomes outlined above.

We estimate that the compliance costs would be relatively minor compared to the revenues of in-scope multinationals. However, the implementation approach seeks to minimise compliance burdens by leveraging existing transparency disclosures which entities comply with currently, either under the OECD BEPS Action 13, or voluntarily through the Board of Taxation’s Tax Transparency Code or Global Reporting Initiative tax standard. We also note that while the Global Reporting Initiative has relatively low uptake for tax disclosures, it is a common reporting standard for MNEs internationally to comply with their governance requirements²⁰. We note that compliance costs could be considered further with additional consultation on elements of the measure.

18 ATO, 2022, <https://www.transparency.gov.au/annual-reports/australian-taxation-office/reporting-year/2021-22>

19 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021L2101>

20 <https://assets.kpmg.com/content/dam/kpmg/se/pdf/komm/2022/Global-Survey-of-Sustainability-Reporting-2022.pdf>

Public CbC reporting would apply to Australian parent entities and foreign head quartered entities that meet the definition of a CbC reporting entity, with the onus to publish the public CbC report falling on the parent entity. This reflects that the parent entity will have the requisite information. We estimate around 2,500 entities may be subject to the new regime, based on the entities that are subject to the OECD CbC reporting regime²¹.

The tax label disclosures were amended to reflect existing CbC disclosure labels more closely, informed by stakeholder feedback.

Reflecting the implementation changes, minor one-off increases in compliance costs associated with complying with the new CbC disclosure obligations are likely to occur in the first income year following commencement. We note there will be initial search costs, namely a learning and education component and potentially evaluation and planning requirements, however, these are not anticipated to be significant, given the final design reflects, generally, existing CbC disclosures (such as MNEs disclosures to tax administrators as part of their OECD BEPS Action 13 obligations). Stakeholder submissions did not quantify the estimated compliance cost to comply with this regime. Treasury’s estimates of the administrative (labour) costs are based on the initial search costs. This estimate has not considered data automation or internal systems upgrades, owing to a lack of available information.

Regulatory impact costs

Potential compliance costs	Total
Implementation	\$25,000,000 (2,500 entities x \$10,000 per entity) ²²

We anticipate entities to incur minor ongoing record keeping costs, however this should align with current practices or reflect business as usual procedure.

Disclosure of subsidiary information

The policy intent of subsidiary disclosures is to increase the transparency of company structuring arrangements. The use of complex structures and multiple subsidiaries globally can be an indicator of base erosion and profit shifting risk, for instance, using related party payments and purchases to reduce Australian tax payable.

This disclosure will enhance the public scrutiny as to how public companies operate in Australia by removing discretion around what is or is not included in financial reporting. For example, the requirement to report on all subsidiaries is intended to capture structures that may not currently meet the existing threshold for disclosure (generally based on a subjective “materiality” assessment), but nonetheless may have some form of control/influence over the domestic entity. This approach is consistent with other jurisdictions, such as the UK, which has similar laws.

Additionally, Treasury is of the understanding that when similar disclosure obligations had been introduced overseas (such as in the UK), that it resulted in some companies opting to simplify their

21 https://stats.oecd.org/Index.aspx?DataSetCode=CBCR_TABLEI (Aggregate data reverse engineered)

22 Estimate has low reliability and has not been tested; stakeholders did not respond to questions on regulatory costs in a quantitative way. The estimate is an average-based assumption of two tax advisors with in-house charge rates of \$1,000, for 5 hours, assessing the law and new obligations. It reflects prior allocative efficiencies, namely: a large population of CbC reporting entities will have already familiarised themselves with the EU Directive which has similar disclosures; these same entities already comply with OECD CbC reporting; some of these entities, including in the extractives industry, already comply with the GRI; and that MNEs generally are shifting towards enhanced corporate governance, reflected in more detailed investor material on company websites. The rates are estimates, as charge fees are generally not published.

structures (either by removing dormant structures or operating through subsidiaries). This outcome would further support the increased transparency outcome by reducing opaque tax structures.

When applied with the public CbC reporting option, this will hold companies to greater account on their corporate structuring/tax affairs.

While the population of in-scope entities is potentially large²³, this option is anticipated to have an observed compliance effect only on entities with complex structures (i.e. those operating with multiple subsidiaries). As an indicative estimate, there are approximately 471 large corporate groups (Australian public companies), with a group turnover greater than \$250 million²⁴. These entities operate across all sectors. This cohort is the focus of the estimated regulatory burden measurement – this has not been tested with industry, as stakeholders did not respond to relevant questions in consultation in a quantitative manner. We anticipate compliance burdens to be muted for listed ASX companies, who already provide this disclosure, in some form, and should have the requisite information ready. For smaller companies, the compliance effect is expected to be negligible, on the assumption they operate with minimal (or no) subsidiary operations; that is, smaller companies with no subsidiaries will only need to report a ‘nil’ item.

The requirement to report subsidiary information will occur through a company’s existing annual reporting process, helping to minimise compliance costs. That is, in-scope entities reporting their financial statements (which may include some information on subsidiaries), notes to the financial statements, and a director’s report will add an additional report to this package of documents.

We expect reporting entities would have this information (i.e. it is not new information), although we accept that it is an additional impost on company directors/auditors, which we anticipate falling largely in the initial reporting period. Stakeholders did not quantify the estimated cost. On balance, we estimate the administrative (labour) costs, based on an initial transaction (search) costs could be:

Regulatory impact costs

Potential compliance costs	Total
Implementation	\$ 4,710,000 (471 entities x \$10,000 per entity) ²⁵

Requiring government tenderers to disclose their country of tax domicile

Regulatory impact costs

The measure is a continuation of existing disclosure requirements already in place when bidding on Australian government contracts. The requirement to disclose tax domicile information is a one-line label in the tender documentation and expected to have a negligible regulatory impact, rounded down to zero.

23 Unlisted public company data is not published, however based on financial report lodgings with ASIC in the 12 months to 30 June 2022, we estimate around 5,750 entities are in scope. Additionally, as of 16 May 2023, there were 2,110 ASX or NSX listed Australian formed entities (public companies).

<https://www2.asx.com.au/markets/trade-our-cash-market/directory>

<https://www.nsx.com.au/marketdata/directory/>.

24 <https://www.ato.gov.au/General/Tax-and-Corporate-Australia/In-detail/Demographics-of-large-corporate-groups/>

25 Estimate has not been tested. It is an average-based assumption of a tax advisor and an accounts auditor with in-house charge rates of \$1,000, for 5 hours, assessing the law and new obligations. It reflects that in-scope entities would likely already have the requisite information and systems in place to respond. The rates are estimates, as charge fees are generally not published.

The overall benefit of this element is expected to be minor, however it does contribute to the overall intent of ensuring that businesses are more upfront about their tax affairs.

Consultation Plan

Treasury conducted extensive stakeholder consultation on these policy options. The general feedback on each measure is summarised below.

Consultation: discussion paper (August 2022)

A discussion paper on the Government's election commitments was released for public consultation, from 5 August to 2 September 2022. Treasury met virtually and in-person with industry representatives from the corporate sector, tax advisory firms, academics and civil society. Submissions (some in confidence) were received from businesses, industry groups, academics, civil society groups and individuals. Virtual meetings were also held with several stakeholders. A full list of stakeholder submissions can be found at: <https://treasury.gov.au/consultation/c2022-297736>.

A summary of key themes raised by stakeholders is provided below. This feedback informed the Government's October 2022-23 Budget announcement.

Consultation summary

Public CbC reporting: Stakeholders expressed general support for increased tax transparency reporting. Stakeholders supported leveraging existing CbC reporting requirements (such as the EU Directive or the GRI Tax Standard) to minimise compliance costs. Standardised reporting formats and transitional arrangements were also suggested to help minimise compliance burden and aid transition to any new requirements.

Disclosing material tax risk to shareholders: Stakeholders (generally) queried the subjective nature of 'material tax risk' noting it is an undefined concept, and reflected on the 15 per cent threshold, noting that while it was intended to align with developments to implement a global minimum tax, it would likely create inconsistencies/uncertainty given this work is yet to be finalised. Several stakeholders suggested more meaningful information would be captured if corporates disclosed all subsidiaries, they are operating through instead of disclosing if they are doing business in a low-tax jurisdiction.

Government tenderers disclosing their country of tax domicile: This element attracted minimal attention, although there was general support of this proposal with stakeholders noting it was unlikely to be burdensome. Some stakeholders suggested using tax residency would be a more suitable concept instead of tax domicile which is not clearly defined as an Australian tax concept. Some stakeholders questioned its value in exposing how much Australian or foreign tax will be paid on income from government contracts (or why it was part of a MNE tax integrity package).

In response, the suggested approach to require Australian companies (listed and unlisted) to disclose their subsidiaries (and the location of the tax residency and place of incorporation) was implemented in line with industry feedback. This would be in line with the UK's corporate transparency rules.

While this will not disclose the specific tax rates of the jurisdictions in which subsidiaries are located, it will highlight how companies' structure, with the intent that once this information is in the public domain, entities would reconsider their corporate tax structures. Some stakeholders noted anecdotal experience in the UK has resulted in a decrease of the number of subsidiaries following implementation of this disclosure requirement.

This disclosure would complement the information that would be reported on a CbC basis as part of the broader mandatory transparency reporting arrangements under Option 2.

Treasury worked closely with the ATO and the Australian Securities and Investments Commission on the details of this option.

Consultation: Exposure Draft legislation

Public consultation on the transparency measures was sequenced, to assist stakeholders to provide detailed insights on the exposure draft legislation.

Public country-by-country reporting

Consultation on exposure draft legislation on public country by country reporting occurred between 6 April and 28 April 2023. Treasury met with a range of stakeholder groups – industry representatives, individual firms, tax advisory firms – across all sectors. Treasury received 55 submissions on the exposure draft legislation (including some in confidence), and these are available on the Treasury consultation website. Treasury also met with international groups, including the OECD.

The dominant focus of stakeholder feedback from the business community was the tax data labels which taxpayers would be required to disclose publicly.

Academic and the civil society stakeholders welcomed the disclosure of the proposed tax labels and the role this information will play in enhanced tax transparency outcomes, noting the importance of ensuring data is accessible, searchable, standardised and in a machine-readable format.

Corporate stakeholders, including international groups, generally supported the shift to more meaningful tax transparency; however they noted the current reporting landscape, broadly, and their concerns around additional compliance costs. In this light, stakeholders raised issues with four specific tax disclosure labels – related party expenses, effective tax rate calculation, and the listing and valuing of intangible assets – claiming these disclosures went beyond existing regimes and were unnecessary.

Their concerns focused principally on confidentiality issues (intangible disclosures), and general compliance imposts claiming that these additional labels were a material departure from the general multilateral consensus on CbC reporting (i.e. the EU Directive and OECD confidential CbC) and would require additional IT systems builds. In this regard, stakeholders framed their views around ensuring global consistency with public CbC regimes, claiming that the EU Directive model would be preferable. Similarly, stakeholders also claimed that the 1 July 2023 commencement should be deferred to align with the EU Directive (which is generally expected to commence from June 2024).

Treasury sought to understand the quantitative impact from the additional disclosures, as described by industry, however stakeholders did not provide estimates other than to note that additional staff would be needed to process the data inputs (at least until taxpayer reporting systems were automated). Stakeholders focused qualitatively, including by providing anecdotal insights, for example on valuation and materiality constraints with the intangible asset disclosures.

In response to this feedback, the four additional data disclosures – related party expenses, the effective tax rate disclosure and the two intangible assets disclosures – were removed from the proposed option. Additionally, the application of the public CbC measure was proposed to be deferred by 12 months, to apply from 1 July 2024.

These amendments were suggested to balance the policy intent needs of ensuring public tax disclosures do not undermine the competitiveness of Australian based operations or detract from Australia's ability to attract foreign capital investment and investment while still providing a comprehensive and forward leading public disclosure regime of tax information on a country-by-country basis.

Following the close of formal consultation, international stakeholders reached out to Treasury to enquire how the disaggregated approach to reporting would operate, noting this was a departure from both the OECD confidential approach to CbC reporting and that of the EU.

Disclosure of subsidiary information

Consultation on exposure draft legislation and explanatory material on disclosure of subsidiary information occurred between 16 March 2023 and 13 April 2023. Treasury received six written submissions.

The exposure draft legislation reflected stakeholder feedback from the initial consultation paper; that having a full list of subsidiaries would provide a more objective mechanism for disclosing information on company tax arrangements, as opposed to disclosing doing business in tax havens.

Stakeholder feedback on the draft legislation subsequently focused on minor technical drafting suggestions and areas that would benefit from additional clarification, such as in-scope entities and timing of disclosures. For example, stakeholders sought clarity on terms like ‘jurisdictions’ versus ‘countries’, and what the effect of ‘true and correct’ versus the existing ‘true and fair’ concept might mean for in-company sign-off on these disclosures.

The final legislation made minor changes in line with stakeholder feedback, as appropriate.

Government tenderers’ disclosure of their country of tax domicile

The measure for Government tenderers disclosing their country of tax domicile did not require legislative amendment and so was not subject to additional public consultation.

This measure can be implemented administratively, through an update to the Commonwealth Contracting Suite, ClauseBank and guidance material published on the Treasury’s website. It is intended to be implemented with negligible compliance burden and will operate to complement existing tax details required of Australian Government tenderers, such as the Shadow Economy Procurement Connected Policy, without imposing excessive compliance burden on industry.

Preferred option and implementation

The Government’s election commitment is the preferred option. The implementation of this option has been informed by consideration of stakeholder feedback, particularly on exposure draft legislation from the business community (as the cohort incurring the direct compliance cost). Accordingly, the proposed implementation design reflects a balance with compliance cost considerations on business, while delivering meaningful improvements in tax transparency (supported by the civil society and community stakeholders).

Through public consultation, stakeholders indicated their general support for enhanced tax transparency and broadly accepted the role this information has in instilling community confidence in the Australian tax system. However, business stakeholders noted there needs to be a balanced approach to ensure this increased transparency did not place unnecessary compliance burdens or encroach taxpayer confidentiality/sensitive information.

This balance, and recognition of the competing business stakeholder views and civil society feedback, will help to support the implementation of, and taxpayer compliance with, the new disclosures. However, it also recognises that meaningful improvements to taxpayer disclosures also gives rise to some broader economic benefits. For example, reduced information asymmetries can support investors to make more informed decisions, assisting efficient capital allocation frameworks. The increased disclosures and better data availability will also support a more informed analysis of

corporates' tax affairs, helping to support trust in the tax system which is a focus of the general community.

Reflecting these outcomes, the Government's election commitments can ensure a meaningful improvement to tax transparency disclosures compared to the status quo option of no changes. A high-level of taxpayer compliance that gives rise to better data will be an indicator of successful implementation of this option.

A summary of the proposed design of these options (and in relation to the design proposed in the consultation paper) follows:

Public Country-by-Country Reporting

This element applies to entities with an Australian presence that are:

- a CbC reporting parent within the meaning provided by section 815-375 of the *Income Tax Assessment Act 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.

This definition will apply to Australian parent entities and foreign head quartered entities that meet the definition of a CbC reporting entity. The onus to publish the public CbC report will fall on the parent entity, reflecting that the parent entity will have the requisite information needed to comply with the proposed regime.

The guiding principle on the final legislative parameters was to balance the Government's policy intent for meaningful improvements to tax transparency disclosures with compliance burdens on taxpayers. This had regard for leveraging existing concepts and mechanisms (including existing regimes), where possible. For example, requiring the parent entity to publish the report leverages the existing OECD process (where lodging of the CbC 'master file' rests with the parent entity).

The content of the public CbC disclosure reflects the data that entities would generally disclose under an existing reporting regime, such as the existing OECD CbC disclosure requirements, which has general overlaps with the EU Directive (table below refers).

Table 1: Summary of Australian public CbC disclosures²⁶

	OECD CBC	Global Reporting Initiative 207	EU public CBC	Australian public CBC
Statement on approach to tax	X	✓	X	✓
Name of reporting entities in the CBC reporting group	✓	✓	✓	✓

²⁶ Treasury data, 2023

Description of main business activities	✓	✓	✓	✓
Number of employees	✓	✓	✓	✓
Revenue from (unrelated) third parties	✓	✓	X	✓
Revenue from related parties	✓	✓	X	✓
Book value of tangible assets	✓	✓	X	✓
Profit/loss before tax	✓	✓	✓	✓
Income tax paid (cash basis)	✓	✓	✓	✓
Income tax accrued (current year)	✓	✓	✓	✓
Reasons for difference between income tax accrued and tax due	X	✓	X	✓
Currency used for the report	✓	X	X	✓

The CbC tax disclosures are to be based on the entity's audited financial data to help ensure public confidence in the information, leveraging the Global Reporting Initiative (GRI) approach. This supports confidence in the quality of the data and addresses the verifiability issue with existing disclosures.

The specific tax label disclosures were refined in response to stakeholder feedback during consultation on exposure draft legislation. Stakeholders raised issues with compliance burdens if 'additional disclosures' (beyond what is required in CbC regimes currently) were required and ensuring a balance between transparency and protecting commercially confident data (See Consultation section, above). The table above reflects this stakeholder feedback.

The tax disclosures require that an in-scope entity report on its Australian and global operations. The option does not include a materiality or substance test. These features are intended to support meaningful changes to tax transparency, to support analysis of BEPS.

This 'full disaggregated CbC' approach is broader than the EU's approach which generally operates on an aggregate basis (such as with data labels like total revenue numbers and total accumulated earnings) and limits CbC disclosures to entities with operations in EU member states and EU listed non-cooperative jurisdictions, and aggregated reporting for 'rest of world' activity. The EU also exempts 'small' entities from their regime based on an employee and/or turnover test²⁷.

Stakeholders were mindful of this difference, putting forward a preference for the EU Directive (i.e. a CbC reporting parent would only publish Australian tax data), on the basis it would support greater global consistency in public CbC regimes.

Stakeholders noted generally that 'non-alignment' with the EU Directive would increase compliance costs if taxpayers must operate within multiple systems. However, MNEs are increasingly adopting the GRI (a voluntary reporting standing) for other corporate disclosures,²⁸ suggesting that compliance

27 <https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2023/04/eu-public-country-by-country-reporting-latest.pdf>

28 <https://assets.kpmg.com/content/dam/kpmg/se/pdf/komm/2022/Global-Survey-of-Sustainability-Reporting-2022.pdf>

could be minimised if public CbC disclosures are integrated into broader sustainability reporting (covering other environmental, social and governance reporting), reflecting the growing appetite from various stakeholders for enhanced sustainability reporting.

While the data disclosures lean more towards the GRI and OECD tax CbC model (which in-scope entities already comply with), the option does adopt elements of the EU approach to public CbC. For example, placing the obligation on the entity to publish the CbC report (by lodging an approved form with the ATO, with the Commissioner facilitating publication on a publicly accessible Australian Government website) and reflecting the same 12-month reporting window after the end of the reporting period. Additionally, where there is optionality on a public CbC data label – such as for multiple definition approaches to calculating employee numbers – the option adopts EU terminology to further reduce compliance burdens.

The proposed deferred application by 12 months, to apply from 1 July 2024, also responded to business stakeholder feedback.

While the disaggregated CbC reporting was intended to support meaningful improvements to tax transparency disclosures, there is a recognition that it does depart from the EU and OECD approaches, and that further consultation with industry may be beneficial on this element of the measure (and the measure more broadly).

Disclosure of corporate subsidiary information

This element applies to Australian public companies (listed and unlisted) and requires that they disclose information on the number of subsidiaries and their domicile (e.g. their country of tax residence and place of incorporation). Of the affected estimated public companies in scope (approximately 8,000), only 471 are defined as large corporate groups (Australian public companies), with a group turnover greater than \$250 million.

This measure is intended to provide an objective mechanism for disclosing information on a company's tax arrangements (that is, a statement of fact on whether they operate through subsidiaries, and if so, where those subsidiaries are located).

The disclosure of this information would subject companies to enhanced scrutiny on their tax structures, with the intent it induces a behavioural change in how companies view their tax obligations (i.e. by simplifying their structures and operating with fewer interposed entities).

This disclosure requirement reflects feedback from stakeholders from the initial consultation on the Government's original announcement that it would require companies to *"disclose to shareholders material tax risk to assist shareholders to better understand their investments and any tax structuring arrangements of the company they are investing in"*. The Government announcement included, as an example, reference to the proposed global minimum of 15 per cent being progressed through the G20/OECD Two-Pillar solution.

Stakeholders raised some issues with this original position, that a requirement to disclose business in low tax jurisdictions would be subjective, and potentially create an unnecessary compliance cost given the separate work in train on OECD Pillar Two Solution that would require similar disclosures. Stakeholders also noted the Pillar Two work is still subject to negotiation and potential exclusions (which would have the effect of excluding certain entities from the requirement to perform comprehensive tax rate calculations).

In response to this feedback, the subsidiary disclosure option was implemented instead of the requirement to disclose if an entity is doing business in a low-tax jurisdiction.

Requiring government tenderers to disclose their country of tax domicile

This element applies to all entities tendering for certain Australian government contracts (worth more than \$200,000) to disclose their country of tax domicile (by supplying their ultimate head entity's country of tax residency).

This will complement the existing details tenderers are already required to provide (including about their tax affairs) when applying for government contracts (such as entity name, ABN, business address) and serves as another element to improving transparency on entity disclosures

Implementation plan

Action	Timeframe
Government Budget announcement	October 2022
Public consultation on exposure draft legislation and ongoing work with Finance officials (tenderer's disclosure)	April 2023
Treasury consideration of consultation feedback	April/May 2023
Bill introduced into Parliament, and finalising guidance material with Finance (tenderers)	June 2023
Application date (corporate subsidiary; tenderer disclosures)	1 July 2023
Application date (public CbC reporting)	1 July 2024
Domestic policy maintenance (ongoing)	July 2023+

Evaluation

The election commitments scheduled to apply from 1 July 2023 are in line with the Government's election commitment and October 2022-23 Budget announcements. The proposed 1 July 2024 application date for public CbC reporting reflects stakeholder feedback for additional time to adjust to this measure. Subject to the passage of the legislation through the Parliament, Treasury will continue to work closely with the relevant regulators and industry to refine implementation details, as required. This will include regulatory guidance, as necessary, to assist entities with their compliance obligations.

Interactions with these amendments will also 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'. Treasury will monitor their operation after implementation to detect and address any unintended consequences that may arise, and to ensure the policies are effective and operating as intended. This is consistent with our standard practice, to ensure the laws are operating as intended. This will include regular engagement with stakeholders to better understand whether the practical application of the policy changes has given rise to any unintended consequences. Subject to these considerations, Treasury will assess whether subsequent amendments and/or review of these commitments is required. Treasury will also continue to work closely with the regulators to identify taxpayer behavioural responses including non-compliance.

Attachment A – Public CbC reporting – Non-Confidential Submissions received on Exposure Draft Legislation

Submitter
ACCI
ActionAid
Ai Group
AIA
Ashurst
Asia Internet Coalition
Association of British Insurers
Australian Financial Markets Association
Australian Retailers Association
BAESA
BCA
BDO
BP
Business Roundtable
Business Roundtable
CAANZ
Cochlear
Communications Alliance
Corporate Tax Association
Deloitte
Deloitte
Etica Sgr
EY
Financial Accountability and Corporate Transparency Coalition
Financial Services Council
GRI
International Chamber of Commerce
KPMG
Medicines Australia
Minerals Council of Australia
Mouvement des Entreprises de France
National Foreign Trade Council
National Taxpayers Union
Norges Bank Investment Management
Oxfam Australia

Pitcher Partners
PRI
Public Services International
Publish What You Pay Australia
PwC
Richard Murphy
SC Johnson and Son
Sonic Healthcare
SwissHoldings
Tax Executives Institute
The Tax Institute
TJ Holdings
TJN-Aus CICTAR joint submission
UNSW
US Council for International Business

Impact analysis timeline

Timing	Process/action
June 2022	Preliminary assessment sent to OIA for comment
August 2022	Public consultation on discussion paper First draft of IA sent to OIA for comment
September 2022	Revised draft of IA sent to OIA for comment
October 2022	Measures announced in Budget
March/April 2022	Consultation on exposure draft legislation
April 2023	Revised draft of IA sent to OIA for comment
May 2023	IA sent to OIA for First and then Second Pass Final Assessment