

**COMMUNICATIONS
ALLIANCE LTD**



Communications Alliance Submission

to the Treasury
in response to the Exposure Draft of the

Treasury Laws Amendment (Measures 4 for Future Bills) Bill 2023: Multinational 5 tax transparency - Tax changes

(Public country-by-country reporting)

28 April 2023

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1. Introduction

Communications Alliance is grateful for the opportunity to contribute to Treasury's consultation on draft legislation to implement public country-by-country reporting (PCbCR).

Due to the number of consultation processes in which Communications Alliance and its members are currently involved and the short period for this consultation, these comments are necessarily quite general. To ensure interested parties have adequate opportunity to comment on the detail of the proposals, we encourage Treasury to conduct further consultation on the underlying policy objectives and the text of the proposed measures before the Government introduces the legislation to the Parliament.

Communications Alliance is the primary communications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, platform providers, equipment vendors, IT companies, consultants and business groups. Our membership includes purely domestic and international companies, both Australian-headquartered and foreign-based enterprises investing in Australia.

The prime mission of Communications Alliance is to create a co-operative stakeholder environment that allows the industry to take the lead on initiatives which grow the Australian communications industry, enhance the connectivity of all Australians and foster the highest standards of business behaviour.

For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

2. International consistency

Communications Alliance is aware that Australian governments have actively supported international efforts to ensure multinational enterprises (MNEs) are subject to a fair and consistent international taxation arrangements under the OECD's Base Erosion and Profit Shifting (BEPS) process. Communications Alliance supports the coordinated approach in principle and encourages the Australian Government to continue to contribute to progress on the BEPS framework.

In regard to PCbCR rules, the current PCbCR proposals would effectively mandate public disclosure of Global Reporting Initiative taxation transparency rules with three additional information points. That approach would go beyond both the BEPS rules and the EU PCbCR rules. We also note that the timing of the proposed PCbCR rules would be in advance of proposals in the EU.

National rules that exceed internationally-coordinated approaches lead to inconsistency and as such lead to two problems that are the same as when countries adopt lower standards. First, the inconsistency distorts international competition and creates perverse incentives for international businesses to locate operations or headquarters in less well-regulated countries. In the case of the proposed PCbCR rules in the Exposure Draft, the outcome would be to disadvantage Australia as a place to invest by imposing additional compliance costs on enterprises considering whether to establish operations here. Second, inconsistency makes the results of CbC reporting less useful by leading to reports in different countries that are incompatible, undermining one of the key goals of the OECD reporting framework.

In light of those considerations, Communications Alliance encourages the Government to adopt PCbCR rules should be reframed to be consistent with the OECD BEPS Action 13 agreed outcomes.

3. Policy clarity and impact assessment

Communications Alliance supports the regulation review process overseen by the Commonwealth's Office of Impact Analysis (OIA). The OIA processes have been refined over many years to ensure that the objectives of policy proposals are clear, the impacts are subjected to rigorous cost benefit analysis and alternatives are considered. It provides a degree of policy independence that brings legitimacy and rigour to policymaking. Even when proposed regulations are part of an election commitment, assessment by the OIA improves the implementation measures by ensuring they implement the election commitment, do not create unintended consequences and avoid conflict with other key policy priorities.

Although the policy objectives are set out in the Explanatory Memorandum for the PCbCR legislation, the objectives are expressed very broadly to "[...] complement the Government's broader regulatory mix to improve corporate disclosures and reflects the shifting public sentiment for greater transparency and accountability on corporate activity, particularly from large businesses." It is difficult to identify what the nature of the public sentiment is and whether the proposed regulations will fulfill the goals any more than the current application of the OECD BEPS Action 13 rules.

To the extent that ensuring large corporates and MNEs pay their "fair share" of tax is a further policy objective of the proposed PCbCR, we note that the Australian Tax Office (ATO) and other tax agencies overseas have access to CbC information to ensure compliance with tax laws. The ATO has recently commented that it has confidence in the compliance of large corporate groups.¹ If that is correct, it follows that even if the public disclosure of CbC information would create debate, it would be unlikely to increase tax collected.

4. Confidential and competitively sensitive information under proposed rules

Communications Alliance is also concerned that the extent and type of information proposed to be collected, as well as creating a large compliance burden, raises concerns about legitimate confidentiality and competitively sensitive data being revealed. Key to the BEPS Action 13 framework is a relationship of trust between corporate taxpayers and tax authorities, such that confidential and sensitive information is provided to assist authorities with tax administration but on the understanding that it will not be released to the public and competitors, which would potentially harm the legitimate business interests of the taxpayers.

The proposed PCbCR rules disturb that understanding and go further by requiring additional disclosures. In particular, a requirement to provide a global catalogue of all intangible assets owned by the MNE and a valuation on those assets would almost inevitably require taxpayers to publicise highly sensitive details of intellectual property and other intangibles that, together with other information (such as revenue) could be used by competitors to gain key insights into corporate strategy and planning. It could also influence competitors' own valuation of intellectual property or other intangibles and influence their decision-making to competing in the markets covered by the disclosures. We urge the Government to reconsider requiring those additional disclosures. The government should also adopt a general safe-harbour for competitively sensitive information.

Communications Alliance also raises concerns that tax information that is deployed in policy or media debates is often misunderstood (and, in some cases, misrepresented) and that the risk of confusion will be greater where the information covers multiple countries. If some form of public CbC reporting is implemented, it will be critical that the regime provides the opportunity for MNEs to include explanations of data and that the ATO ensures that

¹ Refer to: <https://www.ato.gov.au/General/Tax-and-Corporate-Australia/We-have-confidence-in-the-tax-compliance-of-large-corporate-groups/> as accessed on 28 April 2028

information is brought to the attention of users and is accompanied by appropriate general guidance.

5. Conclusion

Overall, Communications Alliance recommends the Government should amend the proposals to support and implement internationally-agreed approaches, particularly with regard to the data required to be provided and safeguards for public release of sensitive information. To the extent any untested changes are pursued, either on the scope of data, coverage or confidentiality, the Government should allow adequate time for review by the OIA and consultation on points of detail to ensure the proposed rules will work in practice and achieve the policy objectives sought.

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