



July 21, 2023

Mr. Tas Larnach
Secretary, Economics Legislation Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Re: Making Multinationals Pay Their Fair Share-Integrity and Transparency

Dear Mr. Larnach,

Introduction

SIFMA's Asset Management Group (SIFMA AMG) brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms – both independent and broker-dealer affiliated – whose combined assets under management exceed \$62 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

SIFMA AMG members are closely watching progress on Australia's Multinational Tax Integrity and Tax Transparency package (the Bill). **While that legislation has multiple elements of relevance, this letter focuses entirely on the potential Public Country-by-County Reporting aspects, articulated in part by the Bill's Explanatory Memorandum which complements consultation earlier this year.** SIFMA AMG, as a U.S. based association, is focused on the cross-border impacts of policy and regulation and it is in that context that the prospective reporting measures warrant the most urgency at the present time. We welcome the opportunity provided by the Senate's public inquiry to contribute to this discussion.

The international asset management industry strongly values the Australian capital markets. Market capitalization in Australia was almost \$2 trillion in 2021, a four-fold increase over twenty years. Our members aspire to continue to be a part of that market growth and the employment and investment that it underpins. The United States alone accounted for over 40 per cent of foreign equity investment into Australia in 2022 and a quarter of all inward investment¹.

¹ <https://www.abs.gov.au/statistics/economy/international-trade/international-investment-position-australia-supplementary-statistics/latest-release#financial-account-transactions>

Country-by-Country Tax Reporting

We welcome the 23 June 2023 announcement from the government in Australia of a 12-month delay in the implementation of Country-by-Country (CbC) reporting to 1 July 2024. It is vitally important that tax policy be fully deliberated, not least of all to ensure that unintended adverse economic consequences do not arise as a result and such a delay can help foster that deliberation.

Finance ministries across the globe are responding to public and political pressure to crack down on misbehavior by some large multinational actors by putting forward proposals designed to promote tax transparency. These initiatives could create inadvertent consequences. It is imperative to design these measures with a proper recognition of the vast web of existing global tax reporting requirements, and the legitimate challenges to comply with these overlapping yet misaligned regimes. In these circumstances, such initiatives may provide confusing information to governments and investors that do not tell an accurate story of a company's taxpaying status and can be counterproductive to other goals such as economic growth. The OECD earlier this month raised unintended consequences with Australia's approach to CbC reporting including the cessation of international partners sharing tax information with Australian authorities.

We therefore hope to be a helpful global industry resource for those practical purposes.

Principles for Country-by-Country Tax Reporting

To help properly assess potential unintended consequences and support the continued competitiveness of Australia, SIFMA AMG suggests principles that should underpin the design of any new reporting regime. These can broadly be defined as concerning the regime's (a) goal (b) scope relative to international norms (c) approach to the financial sector and (d) process.

- **Goal:** Country-by-Country tax reporting is about tax *transparency*. The financial services industry is already a significant payer of tax revenue in Australia; The Australian Banking Association estimated that banks and capital markets account for 60 per cent of the tax paid by the ASX 200 industries. Many Multinational Enterprises (MNEs) domiciled outside of Australia already publicly disclose corporate tax paid in Australia. Rather than being the purpose of CbC tax reporting, it is the OECD's *Pillar Two model rules* that aim to address the tax challenges arising from digitalization and globalization by establishing a global minimum corporate tax rate set at 15%. Australia is one of the 137 signatories to this agreement. Moreover, the OECD has warned that, as previously proposed, Australia's CbC reporting would risks potentially '*undermining and weakening*' efforts to tackle tax avoidance in certain parts of the global economy.
- **Recognizing international confidentiality norms:** To avoid harmful competitive impacts, Australia should consider building in protections for confidential data. A safeguard clause that would protect the competitive position of firms operating in Australia would also allow the regime to be sensitive to Australia's international competitiveness – by aligning Australia with other jurisdictions remaining within the spirit of global tax transparency efforts by allowing commercially sensitive information to remain confidential. For example, the EU has 'comply or explain' provisions and other measures to protect commercially sensitive information.
- **Approach to the financial sector:** In terms of scope, the OECD has also highlighted the unique circumstances of financial services from the perspective of global taxation. Due to capital adequacy requirements, the Regulated Financial Services Exclusion provision omits the revenues and profits from Regulated Financial Institutions that reflect the risks taken on and borne by the firm. As the

OECD recognizes 'It is this regulatory driver that generally helps to align the location of profits with the market. The scope of the exclusion derives from that requirement².'

- **Process:** As the EU process confirms, an inclusive process is crucial. We commend the Australian authorities for their efforts to promote more stakeholder input. As with other jurisdictions, the Government has recognised the need to align with the OECD and shifted its approach on CbC tax reporting, which is welcomed. Going forward, we would value the opportunity to provide input on drafting the Bill in a way that fulfils the Government's objectives but doesn't force some MNEs to disclose sensitive information, which could unintentionally create an uneven playing field but have no impact on the quantum of tax recovered by the Australian Government.

International Context

Under BEPS Action 13, all large multinational enterprises (MNEs) are required to prepare a CbC report with aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which they operate. This CbC report is shared with tax administrations in these jurisdictions, for use in high level transfer pricing and BEPS risk assessments.

The European Union's Country-by-Country tax reporting regime became effective in 2021, a process that took a full five years from the original European Commission proposal to the date it entered into force. The Commission consulted a broad range of experts and interested parties from summer of 2015 onwards and it also launched a public consultation. Over 400 respondents representing firms, industry associations, NGOs, citizens and think tanks responded to this consultation. This policy is such a complex and sizeable reform that this level of consultation was necessary.

Moreover, due to the complexity of such a process the EU position is still somewhat fluid today as the regime is transposed by national governments. EU Financial Services Commissioner Mairead McGuinness recently remarked of this process:

*'European Union Gold-plating may make it harder for these companies to comply with different national rules, possibly to a point where legal certainty is at stake'*³.

We strongly encourage the Australian authorities to liaise closely with their EU counterparts to leverage the insights they gained through that process. We believe it will help Australia avoid problematic issues and promote a smoother policy process for all parties.

Conclusion

We would be delighted to discuss these issues further and stand ready to provide any more information from the financial services industry that might prove helpful. Please reach out to Peter Matheson (pmatheson@sifma.org) or myself (ikeljo@sifma.org) if you have questions or follow-up.

Sincerely,

² <https://www.oecd.org/tax/beps/public-consultation-document-pillar-one-amount-a-regulated-financial-services-exclusion.pdf>

³ https://ec.europa.eu/commission/presscorner/detail/en/speech_23_384

A handwritten signature in blue ink, reading "LKeljo". The signature is fluid and cursive, with the first letter 'L' being particularly large and stylized.

Lindsey Weber Keljo

Head – Asset Management Group