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By Danish Mehboob

Documents

Reporting Draft

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Business groups say number of reports required is excessive
Fewer technical requirements is a 'step in the right direction'

Business groups welcomed a scaled-back draft of Australia's public tax disclosure framework, but they have concerns about its extensive reporting requirements, high penalties for late filings, and reputation hazards.

The Australian Tax Office released a revised public country-by-country reporting draft Monday with fewer technical requirements compared to its previous version released in April 2023 to better align with other public disclosure regimes, namely those from the OECD and the EU.

"To be effective, Australia's multinational tax transparency framework must be consistent with other nations," said Andrew McKellar, chief executive officer, Australian Chamber of Commerce and Industry.

The draft framework would take effect July 1, also in line with the EU framework's mid-2024 deadline. Only EU countries require public country-by-country reporting so far.

Australia's revised draft cut requirements including disclosures on a company's book value of intangible assets, related party expenses, and effective tax rates on a country-by-country basis, which more closely follows the Organization for Economic Cooperation and Development's requirements.

The revised draft also allows multinational companies to prepare simpler reports using global aggregated data on income, profit, and taxes paid.

However, providing extra details on activities in certain countries still marks a significant step forward in the level of public disclosure required by multinational companies, according to taxpayers.

Anne Gordon, vice president of international tax policy at the National Foreign Trade Council, said the rapidly approaching deadline and "tremendous" information burden — one that goes beyond other disclosure requirements — will strain companies that have to report.

"The revisions made to Australia's CbCR proposal are a step in the right direction, but additional changes are still needed to make the proposal administerable," Gordon said.

Blacklist Reporting

The latest draft requires companies to report on how they structure their tax affairs in 41 countries listed in a determination note because they are associated with tax incentives, tax secrecy, and other matters to facilitate profit shifting activities, according to the Australian Treasury.

Previously, companies would have had to prepare reports for all of the jurisdictions where they operate.

While limiting the information disclosure to blacklisted states with risk of base erosion is welcome, "more than 40 countries makes for a very long list" of reports to provide, McKellar said.

Stuart Broadfoot, tax partner at K&L Gates in Sydney, said that the list is still more extensive than the EU equivalent and includes Singapore, Switzerland, the Cayman Islands, Jersey and Guernsey that are not covered by the EU.

"Whilst the EU scheme focused on recognized non-compliant jurisdictions, the Australian list includes other jurisdictions without a clear rationale," Broadfoot said.

"It's not clear how Singapore or Switzerland should be on the same list as Panama or Russia, but they are by this proposal treated the same as jurisdictions that should be called out for special tax disclosure," Broadfoot added.

ATO did not immediately respond to a request for comment regarding a potential rationale for including countries outside of the EU's tax haven list.

Materiality Threshold

Australia's draft added for the first time a A$10 million ($6.52 million) materiality threshold to exempt multinational companies from publishing tax information if their annual income from Australian activities is below that.

McKellar said the threshold will make Australia more attractive for incoming investment because multinational companies with "a small footprint" will be excluded from the disclosure requirements.

Tony Merlo, tax policy and controversy partner at EY Australia, however, warned many multinational companies operating in Australia clear that threshold. It would also require them to make disclosures that they don't have to do in their home country or any other jurisdiction.

Companies that are only caught by the reporting rules in Australia and won't face the same disclosure requirements in other countries may have an incentive to avoid investing in Australia to not fall under the regime.

Ashurst Australia tax partners Colin Little and Vanja Podinic told Bloomberg Tax in an email there are still requirements in this draft not seen in other disclosure regimes. They suggested Treasury is seeking to ensure multinational companies allocate sufficient resources to their tax matters by requiring them to publish their approach to taxation publicly.

"Other exceptions include publishing the book values of tangible assets and an explanation for any differences in income tax accrued and the amount that would have been paid if the jurisdiction's rate was applied to the taxpayer's profit/loss before tax. These requirements place a greater compliance burden on taxpayers compared to the EU rules," Little and Podinic wrote.

Outstanding Risks

Tim Keeling, tax partner at KPMG Australia, said some taxpayers may find the July 1 deadline for submission challenging and penalties of up to A$825,000 for late filings and non-compliance unreasonable.

"The implementation date is merely months away and the updated text was only released today and it's still not finalized," Gordon said.

Merlo also added the disclosures will be published in a "proscribed format" by the Australian Taxation Office, so the full story on why a low amount of tax is paid in a listed jurisdiction might not be clear from what the tax office provides.

"Accordingly, some impacted businesses may wish to consider their own additional forms of disclosure to better inform stakeholders," Merlo added, pointing to situations where carry forward tax losses are involved or tax payments are made elsewhere under the global minimum tax framework.

"The key concern remains that publishing the required tax data country by country is apt to misinterpretation and can lead to unjustified negative publicity without proper context," Broadfoot said.

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