



2 September 2015

General Manager
Corporate and International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

**FEDERAL CHAMBER
OF AUTOMOTIVE
INDUSTRIES**

ABN 53 008 550 347

Dear Sir/Madam

**Submission on: Exposure Draft Tax Laws Amendment (Tax Integrity
Multinational Anti-avoidance Law) Bill 2015: Country by Country Reporting**

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The Federal Chamber of Automotive Industries (FCAI) is the peak industry body representing the interest of the automotive industry in Australia. FCAI's membership comprises the three domestic passenger motor vehicle manufacturers and all major international brands which import and market passenger, light commercial and four wheel drive vehicles, and motor cycles in Australia.

As the automotive industry is a significant importer and exporter of goods and services to and from Australia with overseas related parties, our members will be directly impacted by proposed Subdivision 815E - Country by Country Reporting.

Within this context the FCAI appreciates the opportunity to participate in the consultation process and accordingly provides the following comments on the Exposure Draft which was issued on 6 August 2015.

Operative Provisions

Section 815-335 Requirement to give statement

As there is neither a definition of the type of "statement" to be requested by the Commissioner, nor a definition of "approved form" it is difficult to comment. We can only assume that it relates to BEPS Action item 13 of the Organisation for Economic Co-operation and Development's Action Plan on Base Erosion and Profit Shifting as outlined in Chapter 1 page 3 of the Explanatory Materials which accompanied the Exposure Draft.

On this premise we would like to comment as follows:

Section 815-360 Exemptions

Whilst this subsection refers to "exemptions" and that the Commissioner may, by legislative instrument, determine that the section does not apply, there are no specific examples of exclusions/exemptions other than those contained in para 1.28 of the Explanatory materials. This paragraph provides that a local entity may only be required to provide the master file and the local file in its statement to the Commissioner, in circumstances where its worldwide parent entity has made a CbC report available to a tax authority in a jurisdiction with which Australia has an information-sharing arrangement in place.

Neither the legislation, nor the Explanatory materials, appear to deal with the circumstance where the worldwide parent entity may not prepare a CbC report (or, for that matter, a Master File), or alternatively, if it prepares such documents, may not be prepared to provide them to affiliates in foreign countries. This situation may arise for various reasons, including the fact that the laws of the country of the parent entity do not oblige it to prepare or file such documents; or the fact that the laws of the country of the parent may prohibit it from preparing such documents, or from supplying such documents to affiliates in foreign countries; or because the supply of such information would be in breach of the foreign parent's long-standing protocols for commercially sensitive information, and thus have potentially serious implications in areas beyond taxation matters.

Within this context, it needs to be understood, that in relation to the provision of global data which has no connection with Australia, local affiliates do not have the power at law to compel foreign parent companies:

- To prepare or create documents that the foreign parent has no obligation to prepare or create under the laws of its country; or
- To prepare and hand over documents which do not exist; or
- To hand over documents which the foreign parent multi-national is not compelled at law within its own jurisdiction to supply to their own or to foreign tax authorities.

In particular, it needs to be understood that, as a matter of law, a member of a multi-national group located in one country has no general legal right to compel other members of the group located in other countries to create, prepare or supply information or documents to the first member simply because that member has been required by a third party or a government authority in that member's country to provide the information or documents: see, for example, *Lonrho Ltd -v- Shell Petroleum Co Ltd* [1980] 1 WLR 627 (HL 1980).

Our main concern, therefore, is that unless there is an exemption for these local entities that are not able to obtain from their foreign parent a CbC Report or Master File, they are exposed to prosecution and penalties on matters over which they have no legal rights or control.

A local affiliate of an overseas parent will be in no position to provide these documents in instances where no CbC Report is available as they will have neither access nor legal entitlement. This issue is of particular concern to local affiliates of USA headquarter multi-national entities.

Accordingly, we recommend that an exemption be provided, either within the legislation itself or by legislative instrument, to exempt Australian companies and their officers from the application of Division 815E and, in particular, from the exposure to prosecution and penalties, in circumstances where they have no legal right to obtain either the CbC Report or the Master File information from the foreign parent company of the Australian company.

In addition, we also recommend that an exemption also be provided in instances where the local entity has an Advanced Pricing Arrangement in place.

Should you have any questions in relation to the above please feel free to contact the FCAI on Tel: 02-6247 3811.

Yours faithfully



Tony McDonald
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