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Multinational tax avoidance - Country-by-country reporting

The Minerals Council of Australia (MCA) appreciates the opportunity to provide comments on the exposure draft legislation to introduce the proposed OECD standards on transfer pricing documentation and country-by-country reporting.

The MCA represents Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable economic and social development. MCA member companies account for more than 85 per cent of Australia's annual minerals industry production and a higher share of minerals exports.

The MCA recognises that Australia's implementation of the country-by-country rules will add to the Australian Taxation Office's (ATO) strong suite of tax integrity rules. The MCA suggests improvements to the legislation to reduce compliance costs for taxpayers and avoid duplication with existing ATO transfer pricing compliance requirements (including the recently updated transfer pricing documentation requirements) without impeding the objective of the legislation to improve the Commissioners ability to carry out transfer pricing risk assessments.

The legislation, as currently drafted, provides the Commissioner with very wide discretion to require all Australian entities in a global group to provide an annual statement to the Commissioner, a country-by-country report, master file and local file. There are few limitations set out in the legislation on the requirements to file this information, the entity within a group that will be required to provide it or the precise nature of the information. This is the case even where an entity has insignificant international related party transactions. Such an approach would impose large compliance costs on taxpayers and create uncertainty as to taxpayer obligations under these new rules.

The MCA is of the view that the legislation should include:

- Clearer guidance on entities expected to provide transfer pricing documentation (country-by-country report, master file and local file)
- Clearly set out exemptions from lodgement including, materiality thresholds for related party dealings, the existence of Advance Pricing Arrangements, low risk transactions etc
- Limitations on the requirement to lodge master and local files where the ATO can request such information under its existing compliance powers.

Statements required to be made under the legislation should generally be limited to lodgement of a country-by-country report. A master file, providing more detail on a multinational group's business operations may be required in certain limited situations. Clear guidance as to the circumstances this can be requested should be set out in the legislation and not solely left to the Commissioner's discretion. This could include materiality thresholds for related party dealings. Local files should only be required to be filed in very limited circumstances given the ATO already has the power to request and obtain this information. Where the ATO wants more schedules completed as part of a tax return

or International Dealings Schedule, they can be requested via the ATO's existing administrative powers.

To reduce the compliance burden imposed by this measure, we submit that country-by-country reports should only be required to be lodged by the head entity of the tax consolidated group and not by all subsidiaries. Equivalency provisions should be included in the legislation so that only the head entity need lodge the country-by-country report. Paragraph 1.22 of the draft explanatory memorandum should be reflected in the legislation to provide that an Australian entity does not have to lodge a country-by-country report if the local entity's parent entity is resident in another jurisdiction, provides a country-by-country report to a tax authority in that jurisdiction and there is automatic exchange of that information with the ATO. To address the concern that the ATO may not have access to a country-by-country report lodged with a foreign revenue authority, the legislation could require an Australian entity to provide it in circumstances where the ATO requests the report from foreign tax authority but does not receive it within a reasonable timeframe.

The requirement to submit a master file and in particular local file within 12 months of the end of the income year introduces a substantial, additional red tape burden on taxpayers. There is no current requirement to file transfer pricing documentation in alignment with Australia's self-assessment tax system (though it is acknowledged that in the absence of adequate documentation, prepared by the time the tax return is lodged, taxpayers are exposed to the risk of penalties pursuant to the application of Division 815 of the ITAA 1997). The ATO already has the power to request and obtain such information when it thinks appropriate; therefore, any requirement to compulsory submit a local file should only be in very limited circumstances.

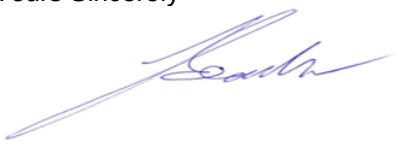
The MCA provides the following specific recommendations on the exposure draft:

- 815-350: "An entity which is part of a group with an annual global revenue of $1 billion…"
- 815-355(2): "You must give the statement within 12 months of the end of the financial year."
- 815-360: Exemptions need to be wide enough to exclude general types of transactions such as those that have an APA, below a materiality threshold, of a simple nature (eg routine services at an acceptable cost plus). In addition exemptions need to be wide enough to apply to a general class of transactions (across multiple taxpayers) as well as to specific entities.

Further consultation with industry should occur at the implementation stage of the country-by-country reporting statement, including development of the approved form. The MCA would appreciate the opportunity to provide input to this process.

Should you require any further explanation of the issues raised in this letter, please contact me (James.Sorahan@minerals.org.au or 03 8614 1816).

Yours Sincerely



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