Dear Ms Collins

SUBMISSION: DRAFT REGULATIONS SPECIFYING THE COUNTRY BY COUNTRY REPORTING STANDARD FOR MULTINATIONAL ENTERPRISES: FOR PURPOSES OF PARAGRAPH (b) OF THE DEFINITION OF “INTERNATIONAL TAX STANDARD” IN TERMS OF SECTION 1 OF THE TAX ADMINISTRATION ACT, 2011

Introduction

1. Thank you for affording the South African Institute of Chartered Accountants the opportunity to provide our feedback and inputs on the above matter.

2. Below are our comments. You are welcome to contact us should you wish to clarify any issue.

Article 1 – definitions – Constituent entity

3. The definition of ‘constituent entity’ is unclear on whether to report the MNE’s proportionate share or total information is required for the Country-by-Country Reporting.

4. For example where the MNE Group owns a 10 per cent interest in a company in a specific country, is the MNE required to report 10 per cent of the gross revenue and other components of the Country-by-Country report or the gross revenue of that company in that country?

5. Submission: The definition and reporting requirement for proportionate shares should be clarified.

Article 4 – Country by Country Report – Stated Capital

6. The information to be reported in the Country-by-Country Report is required to be translated into the functional currency of the Reporting MNE at the average exchange rate for the year.
7. The impact of the translation at the yearly average rate on STATED CAPITAL may thus provide misleading results due to the fluctuation on the functional currency of the Reporting MNE (for example the fluctuation of the ZAR in South Africa).

8. A practical solution is therefore required to avoid such misleading results.

9. It is also impractical to expect MNE groups to translate the stated capital for year in which the capital was issued.

10. **Submission**: It is therefore submitted that the initial reporting be based on the closing exchange rate of the first year of reporting which is then used as a baseline for stated capital and only the additional capitalisation is then translated based on the exchange rate on date of additional capitalisation or the closing exchange rate for the year of the additional capital.

**Article 4 –Country by Country Report – Revenue**

11. Since the definition of ‘associated enterprises’ differs from jurisdiction to jurisdiction, should the related party revenues be based on the local tax rules of the reporting MNE?

12. **Submission**: It should be clarified how related party revenues should be reported by the MNE.

**Article 4 – Country by Country Report – Taxes accrued and paid**

13. The complexity in the definition of the scope of direct and indirect taxes, impact of local tax rules and the variation of what constitutes income taxes from jurisdiction to jurisdiction may create difficulty in the accuracy of the information reported. Further guidance may be required to understand what is included or excluded.

14. Certain industries in certain jurisdictions do not pay taxes in cash but the taxes paid include taxes in kind. It is therefore unclear whether the cash equivalent of these taxes can be reported as part of the taxes accrued and paid to ensure that reporting of lower or no cash taxes does not lead to incorrect risk assessments by SARS.

**Article 4 – Country by Country Report – Number of Employees**

15. Article 4(1)(i) requires the MNE Group to report the number of employees.

16. Where a requirement in the proposed regulations is unclear, article 4(2) requires that the definitions and instructions in the standard template set out in “Annex III to Chapter V” set out in the OECD/G20 Base Erosion and Profit Shifting Project Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report must be used.
17. As to who is an employee the OECD template states:

“….and MNE should report the total number of employees on a full time equivalent (FTE) basis…” and “…. For this purpose independent contractors participating in the ordinary operating activities of the Constituent Entity may be reported as employees.”

18. The OECD glossary of terms states":¹

Definition:

Full-time equivalent employment is the number of full-time equivalent jobs, defined as total hours worked divided by average annual hours worked in full-time jobs.

19. However the Annexure III definitions do not incorporate this definition and neither does the draft regulations.

20. It remains unclear where shared cross border resources need to be reported. For example where employees are shared between a constituent entity and its branch or Permanent Establishment.

21. It is also unclear whether the local labour law or income tax concepts of employee and independent contractor refers.

22. Submission: The “FTE” OECD definition should be included in the regulation definitions with clarification of its application in a local law context.

Yours sincerely

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¹ https://stats.oecd.org/glossary/detail.asp?ID=1068