



**CORPORATE TAX  
ASSOCIATION**  
of Australia Incorporated

2<sup>nd</sup> February 2016

Secretary  
Board of Taxation  
c/ - The Treasury  
Canberra ACT 2600

## Tax Transparency Code – Consultation Paper

The Corporate Tax Association (CTA) welcomes the opportunity to make a submission in response to the Board of Taxation's (Board) Tax Transparency Code (TTC) Consultation Paper (consultation paper).

The CTA has long supported the adoption of informative, sensible tax disclosures that assist in the understanding of the corporate tax system and the taxpayers that operate within it. We understand that improvements in tax transparency reporting is a necessary part of the response to the growing demand from stakeholders, including governments, investors and the media, for a greater degree disclosure of tax information.

Devising a TTC that strikes an appropriate balance between promoting community confidence in the tax regime and the commercial, sovereign and compliance sensitivities associated with the release of company data is not an easy task. In our view, the Board has largely managed to accommodate these competing objectives by devising a TTC that is structured around principles and minimum standards which reflect the interests of the numerous stakeholders involved in this consultation process.

### Promoting community confidence in the tax system

One of the primary objectives of public disclosure of corporate tax information is to help educate the public about large business compliance with Australia's tax laws and to build confidence in the vast majority of businesses operating in Australia that do the right thing.

This objective places a responsibility on all stakeholders utilising the information disclosed via transparency measures such as the TTC to seek to understand the foundations of the system that supports that information. The CTA's publication *How the Australian Company Tax System Works*<sup>1</sup> (which is aimed for public release in the coming months) is aimed at assisting those that seek to understand the corporate tax system by shedding some light on some of the more misunderstood corporate tax concepts and how they work in practice.

Inaccurate claims of tax avoidance and companies not paying their "fair share" have the potential to unduly cause brand damage to a large number of companies which are lawfully complying with the tax rules in Australia today. Such claims can also have the effect of further undermining the community's confidence in the

integrity of the tax system. Any discussion of the adequacy of Australia's corporate tax laws whether in the context of transparency or otherwise must be constructive, well informed and based on facts and evidence. Perhaps the Board could consider some stronger messaging on this point when finalising the TTC.

### Australia's tax transparency laws

It is important to recognise that Australia's current tax transparency laws (without taking into account the TTC) are world leading. A comprehensive list of tax disclosures large companies are already complying with is provided at Appendix A.<sup>ii</sup>

Assuming the TTC is introduced, public disclosure of corporate tax information in Australia will surpass all other tax jurisdictions. In fact, based on our understanding of other tax transparency codes, the level of disclosures required under the TTC are not even being contemplated under any other public tax disclosure code at present. On this basis, calls for further transparency measures should be resisted until the full impact of the current TTC proposal is understood, particularly in terms of compliance costs.

Although we broadly support the direction of tax transparency measures in Australia, due consideration must be given to the merits of developing a TTC that is in line with the development of TTCs in other jurisdictions. This will ensure equivalency between jurisdictions, which in turn will result in companies that operate across multiple jurisdictions not having to comply with multiple levels of disclosure in different countries. On this basis, the minimum standards of the code should be carefully considered in the context of other TTCs and at the very least should not be expanded further until their impact can be properly assessed.

### Timeframe for introduction of the TTC

As a strong supporter of effective transparency measures the CTA will be encouraging its members to adopt the TTC according to their individual reporting practices and processes.

As the TTC is voluntary, taxpayers should be able to comply with the code without having to endure excessive compliance costs. On this point, the CTA is supportive of the Board not prescribing mandatory auditing of data.

The proposed implementation date in time for the reporting period for 2015-16 financial statements or annual reports appears to be a retrospective application of the code for those with early balancing substituted accounting periods. It would be helpful if the Board could confirm that taxpayers would disclose 2015-16 data in line with their financial and annual reporting timelines (which for taxpayers with a 31 December 2016 year end, would be in 2017).

In making these points, we are mindful of the following comment made in the Senate Economics Committee Report 'You cannot tax what you cannot see'<sup>iii</sup> on

the implementation of the TTC:

*"The committee recognises that companies may seek to delay the development and implementation of the public transparency code, or may simply refuse to comply where it is not in their interests."*

In no way should our comments on the tight time frame for implementation be read as a resistance to the development or implementation of a TTC. The CTA's objective in making these comments is to encourage the highest take up rate of the TTC as possible. It is important that the Board is aware that some taxpayers will need to make changes to their systems to capture the data required under the TTC and those changes may not be able to be made in time for the proposed start date, particularly for those with substituted accounting periods as noted.

### Specific comments on the TTC

Below are some comments on areas of the TTC as set out in the consultation paper.

1. *Part A - improvements to the disclosures of tax information in financial statements*

We believe it should be made clearer that the additional reporting requirements detailed under Parts A and B allow large businesses the option of either expanding its general purpose financial statements (or the notes thereto) or providing that same information in a taxes paid report or a combination thereof. We suggest this as some corporates apply international accounting standards not Australian accounting standards for financial reporting and a reconciliation of Australian income tax expense and tax paid/payable in line with global income tax expense and tax paid/payable financial accounts can be problematic if different accounting standards are applied and tax functional currency is different from accounting functional currency. The option of having the required financial data in a separate report to financial statements provides the flexibility needed for reporting without at all detracting from the TTC.

In our view, taxpayers should also be given the option to disclose effective tax rate data and qualitative information on tax governance and material transfer pricing arrangements in one taxes paid report rather than having to detail the reconciliation in financial statements and create a separate report for the rest of what is proposed in the TTC. We agree that there should be flexibility for the Part A disclosures to be incorporated into global disclosure reports for companies who already publish such reports (or may do so in the future as other jurisdictions roll out TTC regimes). There does not appear to be any benefit in requiring a separate Australian report, provided all the additional information required under the TTC's Part A is included in existing global reports or may be included in future global reports.

## 2. *Effective tax rates*

The CTA's supports the Board's conclusions on the following:

- To publish an Australian ETR and a global ETR for worldwide consolidated accounting groups.
- To not publish ETRs calculated using the ATO's 'effective tax borne' (ETB) methodology as part of the TTC disclosure. We agree that the ETB calculations are too complex and not suitable for public disclosure. The ETB methodology is also largely untested and provides no sound basis for comparability with other effective tax rate measures.
- For the AASB to play a broader role in the effective operation of the TTC by establishing a common definition of ETR to ensure consistency and comparability of disclosures made under the code and what may transpire under future codes developed by other jurisdictions.

## 3. *Part B – taxes paid report*

The CTA supports the Board's approach to the taxes paid report, particularly its use of both qualitative and quantitative information.

In relation to the 'tax policy' or 'tax strategy' section, we suggest a closer alignment to the proposed UK HMRC tax strategy disclosure regime might be appropriate.<sup>iv</sup> The ATO's tax risk management and governance review guide (as referred to in the consultation paper) is aimed at providing corporates with an understanding of what the ATO believes better tax corporate governance practices look like, so businesses can develop their own tax governance and internal control frameworks and test the robustness of the design of their framework against the ATO's benchmark. In our view this level of detail is not suited to the TTC and its intended users. Alignment with the HMRC legislation would also address our concerns around Australia's transparency code being out of step with other jurisdictions, at least in the context of tax strategy and tax policy.

In relation to the disclosure of dealings with the ATO, we agree that it is not necessary to disclose disputes with revenue authorities as part of the TTC – as the Board points out, these are already subject to accounting or ASX disclosures if material. On the disclosure of the assurance regimes it is important that the ATO commits to issuing RDF risk rating letters to taxpayers impacted by the TTC. These letters provide important context around other assurance products, which may be misinterpreted in the absence of the ATO's risk rating and related commentary.

## 4. *International related party dealings*

The CTA accepts the Board's view as to the need to include information on related party dealings in the TTC and supports the disclosure of material qualitative information on those dealings as being necessary to address community concern around tax issues. In this context it is worth noting that Australia will be the only

country in the world that requires qualitative data on international related party dealings via a tax transparency code.

In regards to the detail contained in the qualitative disclosure, given the extensive nature of some companies international related party dealings, some level of materiality should be introduced to ensure the qualitative information provided is relevant to the TTC users.

The CTA does not support the publication of quantitative data on international related party dealings in the context of the TTC as the release of such information is likely to have serious commercial confidentiality implications and may be misleading, even though the related party dealing relates to a legitimate transaction that forms part of the global value chain and are priced on arm's length terms. On this point, it is important that the community understands that the ATO has access to all relevant information on international related party dealings of all large corporates operating in Australia and will take action where it considers those dealings are not within the confines of the relevant tax laws.

### Conclusion

The CTA would like to congratulate the Board on its approach to the development of a TTC which we believe on the whole strikes an appropriate balance between community expectations and the concerns of business. We trust our comments will assist in the process of finalising the TTC and we look forward to working with the Board on its implementation in due course.

Should you have any questions in relation to the above, please contact me or Paul Suppree on (03) 9600 4411.

Regards



Michelle De Niese  
Executive Director

## Appendix A

### Tax Transparency - Where Australia Current Stands

Tax disclosures occur at three levels:

1. Public disclosures;
2. Taxpayer to ATO disclosures; and
3. Information exchanges between tax authorities.

#### 1 Public disclosures

##### Public reporting of entity tax information

From December 2015, public companies with annual income over \$100 million have the ATO publish their name, Australian Business Number, total income, taxable income and income tax, minerals resource rent tax, and petroleum resource rent tax payable.<sup>v</sup> Only Denmark, Sweden, Finland and Norway have laws under which similar information can be publicly disclosed by Tax Authorities.

##### Extractive industries transparency initiative

Companies in the extractive industries which are headquartered in the US, Canada and Europe must disclose certain tax data on payments made to Governments around the world.<sup>vi</sup> Under the Extractive Industries Transparency Initiative (EITI) information is also voluntarily shared under the EITI on the amount of taxes paid to various Governments, including those outside the US, Canada and Europe. Most of the large mining and oil and gas companies operating in Australia are currently subject to this initiative or voluntarily comply with it. Similar sorts of tax disclosures are also required for financial institutions that operate in Europe.<sup>vii</sup>

##### Financial Reporting Disclosures

Australian and International accounting standards require publicly listed companies to include tax information in their financial accounts which details the calculation of their tax liability for a particular year and why this differs from the tax rate applicable in its home jurisdiction.

Accounting standards also require material related party transactions to be disclosed in the financial accounts of publicly listed entities.<sup>viii</sup>

#### 2. Taxpayer to ATO disclosures

##### Early adoption of country by country reporting

Australia has adopted the OECD Country by Country (CbC) reporting with effect from 1 January 2016. The CbC reporting regime requires companies with a global turnover of over \$1 billion to provide details of revenues, profit, taxes paid, taxes

accrued, stated capital, accumulated earnings, number of employees, tangible assets and types of transactions for all tax jurisdictions in which they operate. This information will be provided to the ATO and will also be shared with other tax authorities around the world via the signing of the Multilateral Competent Authority Agreement for the automatic exchange of CbC reports. Detailed supporting documents known as master and local files will also be provided to the ATO. Australia will be one of the first OECD countries to adopt CbC reporting.

#### Disclosure of all related party dealings to the ATO

Current annual corporate tax returns require companies to provide detailed disclosures to the ATO including all international related party dealings via an International Dealings Schedule. This information includes the type of dealing, its quantum and location of all international related party transactions including those in low or no tax jurisdictions.

#### Preparation of transfer pricing documentation for all related party transactions

Large corporate taxpayers are required to fully document all related party transactions outlining to the ATO the basis of any related party dealing including the methodology adopted to price them.

#### Reportable tax positions schedule

Large corporate taxpayers are required to disclose any "reportable tax positions" (or positions taken that are not reasonably arguable) to the ATO as part of the annual tax return process.

#### Pre-compliance reviews

Most large corporates are subject to real time risk assessments under various ATO initiatives such as pre-compliance reviews (PCRs). During the PCR process the ATO and corporates discuss the corporates' tax performance, areas of potential risk and possible disputes in real time, before the lodgment of tax returns. The ATO also undertakes a risk rating for all large corporates, and bases its compliance approach according to this risk assessment. The ATO also regularly contacts corporates as part of its ongoing revenue monitoring processes and seeks information on tax payments, including reasons why tax payments may vary from what is anticipated.

### 3. Information exchanges between tax authorities

#### Tax treaty and information exchange networks

Australia has a network of 45 tax treaties with major trading partners and also 37 Tax Information Exchange Agreements with countries which some regard as tax secrecy (or tax haven) jurisdictions. This treaty and agreement network enables the ATO to seek information from other tax authorities about tax related matters of corporate taxpayers<sup>ix</sup>

## ATO led transparency initiatives

The ATO is also part of a global network of 30 tax authorities involved in JITSIC (Joint Income Tax Shelter Information and Collaboration Network)<sup>x</sup> and 17 Asian tax authorities involved in SGATAR<sup>xi</sup> (the Study Group of Asian Tax Administration and Research) where tax information is regularly shared on tax risks with other Tax Authorities.

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<sup>i</sup> The CTA's publication 'How the Australian Company Tax System Works' will be released in the first half of 2016

<sup>ii</sup> Appendix A is an extract from the CTA publication *Tax Transparency – Where Australia Currently Stands* see [corptax.com.au/tax-transparency-where-Australia-currently-stands](http://corptax.com.au/tax-transparency-where-Australia-currently-stands)

<sup>iii</sup> Senate Economic References Committee Corporate tax avoidance Part 1 – you cannot tax what you cannot see August 2015, page 54.

<sup>iv</sup> The proposed UK HMRC tax strategy disclosure covers four areas:

- the approach of the UK group to risk management and governance arrangements in relation to UK taxation
- the attitude of the group towards tax planning (so far as affecting UK taxation)
- the level of risk in relation to UK taxation that the group is prepared to accept
- the approach of the group towards its dealings with HM Revenue and Customs (HMRC)

See further: <https://www.gov.uk/government/publications/tax-administration-large-businesses-transparency-strategy/tax-administration-large-businesses-transparency-strategy>

<sup>v</sup> Tax information for privately owned groups with total income of \$200m or more will also be published.

<sup>vi</sup> See the Dodd-Frank Act in the US, the EU accounting directive and the Canadian Extractive Sector Transparency Measures Act,

<sup>vii</sup> Australia completed an EITI pilot in 2014 and a decision on whether to proceed with implementation of the EITI is being considered. Further details on EITI can be found here: [EITI](#). EU capital requirement directive (CRD IV) requires certain financial institutions to publicly disclose certain tax data. See [CRDIV](#)

<sup>viii</sup> See Australian Accounting Standards AASB 101 – Presentation of financial statements, AASB 112 – Income taxes and AASB 124 - Related party disclosures. All accounting disclosure requirements can be found at: [Accounting standards](#)

<sup>ix</sup> A full list of tax treaties and tax information exchange agreements can be found at: [Tax treaties](#)

<sup>x</sup> Further details on JITSIC can be found here: [JITSIC](#)

<sup>xi</sup> Further details on SGATAR can be found here: [SGATAR](#)