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# *Tax transparency in Australia*

## *Where are we now?*

25 May 2016



# In brief

The global tax landscape is rapidly changing, and tax transparency has emerged as a key area of focus for governments and tax authorities around the world. With many countries facing large fiscal deficits and growing demand for public infrastructure and services, the amount of tax paid by the businesses operating in a country (in particular, multinational corporations operating in a number of jurisdictions) is under increased scrutiny by governments, tax authorities, the media and the general public.

In Australia, tax transparency has increased exponentially in the last few years, and in some areas, Australia is a global leader on transparency. We currently have a range of 'transparency' measures in effect (or soon to be) which deal with both public disclosure of tax information and increased regulatory transparency between taxpayers and tax authorities, with more likely to come. In this article we highlight some of the key tax transparency measures in Australia, their current status, and speculate as to what might be coming next.

## Public transparency

### Public reporting of tax information



**Status:**

Law enacted. First reports covering 2013-14 income year published in December 2015 and March 2016

December 2015 saw the first publication of tax information by the Commissioner of Taxation under Australia's public tax transparency laws. Under these laws, the Commissioner of Taxation has an obligation to annually publish selected income tax information for certain large taxpayers, and information regarding the Petroleum Resource Rent Tax (PRRT) [and former Minerals Resource Rent Tax (MRRT)], commencing with the 2013-14 year.

Who is subject to these laws?	What information is published?
All corporate tax entities (companies and other entities taxed in a similar manner to companies) with total income of at least \$100 million (as disclosed in its income tax return), except Australian-owned private companies with total income of less than \$200 million.	<ul style="list-style-type: none"><li>• Name</li><li>• Australian Business Number</li><li>• Total income for the year *</li><li>• Taxable income (if any) for the income year *</li><li>• Income tax payable (if any) for the income year *</li></ul>
All PRRT (and MRRT) taxpayers	<p><i>*As reported in the taxpayer's income tax return</i></p> <ul style="list-style-type: none"><li>• Name</li><li>• Australian Business Number</li><li>• Amount of PRRT (or MRRT) payable for the year</li></ul>

As noted above, the Commissioner released his first report under these measures last December, covering public companies, foreign-owned private companies and MRRT/PRRT taxpayers for the 2013-14 year. The publication of the information for Australian-owned private companies with total income of at least \$200 million was released by the Commissioner in March 2016. Presumably the next report which will contain details

for the 2014-15 income year, along with the 2013-14 information for those entities whose tax returns for the 2013-14 income year missed last year's cut-off date, will issue before the end of 2016.

These measures represent a significant shift in the tax transparency landscape, with Australia one of the first countries to adopt such a 'public' approach to tax transparency. A key challenge for companies operating in this environment is to ensure that their tax affairs are properly understood, bearing in mind the limited information that is being put in the public domain. As the implications of such public disclosure of information can be far reaching, particularly the potential for misinformation, affected taxpayers should consider whether additional stakeholder communications are appropriate. In this respect, some companies may wish to consider voluntarily adopting the Tax Transparency Code recently developed by the Board of Taxation (see later comments).

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## Financial reporting for “significant global entities” (SGEs)



**Status:**

Law enacted. Commences from 1 July 2016, with the earliest possible first reporting date being 31 October 2017

In December 2015, Parliament passed new law requiring a corporate tax entity that is a 'significant global entity' (i.e. an entity with annual global income of at least AUD 1 billion or that is part of a group with annual global income of at least AUD 1 billion) to prepare and lodge a general purpose financial statement with the Commissioner of Taxation for years beginning on or after 1 July 2016. This will impact purely domestic companies as well as inbound and outbound groups and non-residents operating in Australia through a permanent establishment.

The general purpose financial statement, which may be the consolidated group financial statements of which the entity is a part, will need to be submitted by the taxpayer to the Commissioner by the due date for lodging the entity's income tax return if these financial statements have not already been filed with the Australian Securities and Investments Commission (ASIC). The Australian Taxation Office (ATO) will be required to pass these financial statements onto ASIC, at which point they will be available to the public, increasing public transparency over the financial affairs of large entities operating in Australia.

This is a significant change as, while some companies operating in Australia already prepare general purpose financial statements, others prepare special purpose financial statements (which contain more limited disclosures), and some do not prepare Australian financial statements at all. The ATO is currently considering its interpretation of the key concepts associated with this new law such as the nature of a general purpose financial statement, as well as considering the necessary administrative and lodgment arrangements to give effect to the measure and guidance materials that the ATO might provide. The ATO plans to issue a discussion paper after the Federal election seeking comments on the required arrangements that we hope will assist in managing the additional compliance burden for affected taxpayers.

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## Voluntary tax disclosure code



**Status:**

The Government endorsed the Board of Taxation's recommended voluntary tax transparency code as part of the 2016-17 Federal Budget

In February 2016, the Board of Taxation (the Board) provided its final report to Government on a voluntary tax transparency code (TTC), which, as part of the 2016-17 Federal Budget, the Government has embraced as one of

the key elements of a stronger tax compliance regime, encouraging all companies to adopt the TTC from the 2016 financial year.

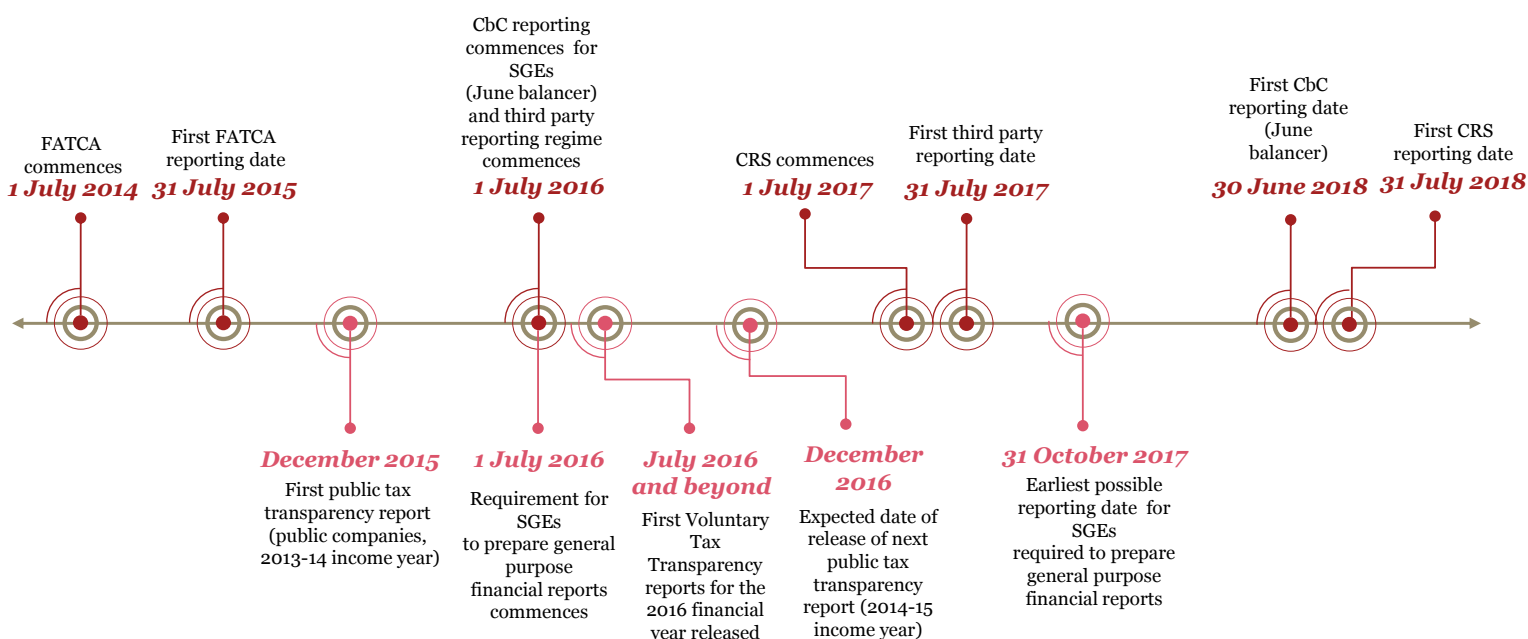
The report contains the Board’s recommendations for additional minimum disclosure of tax information by ‘large businesses’ (Australian turnover of at least A\$500 million) and slightly less disclosure for ‘medium businesses’ (Australian turnover at least A\$100 million but less than A\$500 million), as set out in the table below.

Who is affected?	Recommended minimum standard of disclosure
Medium businesses (Australian turnover at least A\$100 million but less than A\$500 million)	<ul style="list-style-type: none"> <li>• A reconciliation of accounting profit to tax expense and to income tax paid or income tax payable</li> <li>• Identification of material temporary and non-temporary differences</li> <li>• Accounting effective company tax rates for Australian and global operations (pursuant to AASB guidance)</li> </ul>
Large businesses (Australian turnover of at least A\$500 million)	<ul style="list-style-type: none"> <li>• All of the above</li> <li>• Approach to tax strategy and governance</li> <li>• Tax contribution summary for corporate taxes paid</li> <li>• Information about international related party dealings</li> </ul>

Whilst the TTC is voluntary and there are no financial penalties for failing to comply or providing misleading information, it sets out a minimum standard to help guide businesses that choose to disclose additional tax information. It is proposed that a business would make its TTC Report publicly available (for example, by publishing it on their website) and also provide the ATO with a link to the report for inclusion in a central website that provides a link to all publicly-issued TTC reports.

The Board has also recommended that the Australian Accounting Standards Board (AASB) develop guidance material to assist businesses in meeting the standard required by the TTC (for example, addressing issues such as amended assessments, impairments and foreign currency translation), and to establish a common definition of the term “effective tax rate” to ensure consistency. We expect the AASB will consult with business soon in preparation for the 2016 reporting season.

### Regulatory transparency – key commencement and reporting dates



### Public transparency – key commencement and reporting dates

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# Regulatory transparency

## Foreign Account Tax Compliance Act (FATCA)



**Status:**

Law enacted. First reporting date was 31 July 2015

The Foreign Account Tax Compliance Act (FATCA) was enacted by the United States (US) Government as part of its efforts to improve compliance with US tax laws, and imposes certain due diligence and reporting obligations on foreign (that is, non-US) financial institutions. FATCA applies to Australian financial institutions from 1 July 2014, with the first annual reporting date being 31 July 2015. Australian financial institutions are not required to report information directly to the US Internal Revenue Service (IRS) – instead, they report to the ATO, which then shares this information with the US Internal Revenue Service under the Australia/US FATCA Intergovernmental Agreement.

Australian financial institutions are required to follow specific due diligence procedures to identify all accounts held by US residents, and report information in relation to those accounts to the ATO. In addition to administrative penalties imposed under Australian law for failing to meet these obligations, the US will also impose a 30% withholding tax on certain US income derived by foreign financial institutions that fail to meet their reporting obligations

## Common Reporting Standard



**Status:**

Law enacted. First reporting date is 31 July 2018

In March this year, legislation was passed into law to implement the Organisation for Economic Co-operation and Development's (OECD) Common Reporting Standard (CRS) in Australia for the automatic exchange of financial account information. The CRS is intended to reduce international tax evasion and, following the introduction of FATCA in the US, represents the next significant wave of tax reporting for financial institutions and account-holders.

Similar to FATCA, according to the CRS law, Australian financial institutions will need to carry out due diligence procedures to identify the tax residence of account holders and report relevant data to the ATO. The Commissioner will then provide this information to tax authorities in other jurisdictions and will receive information on Australian tax residents with financial accounts held overseas.

The CRS is often referred to as the global version of FATCA, and there are certain commonalities between the due diligence and reporting obligations (as well as alignment of timing of the reporting obligations). There are, however, differences between FATCA and the CRS that will add a significant compliance burden for Australian financial institutions (not the least that under the CRS, Australian financial institutions need to identify the residency of all foreign account holders, not just those held by US residents).

Australia's CRS first applies to the reporting period 1 July 2017 to 31 December 2017 and then to every subsequent calendar year. The first reporting deadline is 31 July 2018 in respect of the period 1 July 2017 to 31 December 2017.

Whilst the CRS is primarily a transparency measure between taxpayers and tax authorities, in Australia it also has a public transparency aspect. In particular, some late amendments to the implementing legislation require the Commissioner of Taxation to publish an annual report providing aggregated, de-identified data on the financial holdings of foreign nationals in Australia.

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## Country-by-Country (CbC) reporting and transfer pricing master file/local file requirements



**Status:**

Law enacted. First reporting dates are 31 December 2017 (for December balancers for the year ended 31 December 2016) and 30 June 2018 (for June balancers for the year ended 30 June 2017)

The Government also recently enacted legislation to implement new standards for transfer pricing documentation and CbC reporting, developed as part of Action 13 of the G20 and OECD's Action Plan on Base Erosion and Profit Shifting (BEPS).

In Australia, these new provisions apply to SGEs that are not subject to an exemption granted by the Commissioner and requires them to lodge the following documents with the Commissioner of Taxation within 12 months of the end of an income year:

- A master file providing an overview of the group's global business, including the nature of its global business operations, its overall transfer pricing policies, and its global allocation of income and economic activity
- A local file focusing on specific transactions between the reporting entity and its associated enterprises in other countries, as well as the amounts involved in those transactions, and the entity's analysis of the transfer pricing determinations that it has made, and
- A CbC report containing certain information relating to the global allocation of the multinational enterprise's income and taxes paid together with certain indicators of the location of economic activity within the global group.

The ATO has already issued guidance on the application of the new CbC rules in the form of Law Companion Guideline LCG 2015/3 which is binding on the Commissioner. Although the ATO has indicated that the new transfer pricing documentation requirements are independent of the International Dealings Schedule which is currently required to be lodged by certain taxpayers with their annual income tax return, it will consider ways to ensure that, as far as possible, that there is no unnecessary duplication in the reporting requirements. The ATO is also working on developing additional guidance to assist entities with applying these new rules, which we expect will issue well in advance of any reporting deadlines.

Whilst penalties currently apply for failing to meet these obligations, the Government has announced in the 2016-17 Federal Budget that it intends to increase these penalties by 100 times (up to a maximum of \$450,000) for 'SGEs that fail to meet any of their reporting obligations. The Labor Party has also indicated it will substantially increase these penalties if elected to Government.

These new obligations are intended to provide relevant and reliable information to assist the Commissioner carry out transfer pricing risk assessments, and to enable information sharing with tax authorities in other jurisdictions. Australia is one of 39 countries that have signed the Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of CbC reports. The first information exchanges under this agreement will occur in 2017-18 in respect of the 2016 calendar year. For further information on the new transfer pricing documentation requirements, see our [Tax Insights publication](#) of 8 December 2015.

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## Third party reporting regime



**Status:**

Law enacted. For transfers of real property and reporting by ASIC, this regime commences 1 July 2016 with the first reporting date on 31 July 2017. For all other reporting, this regime commences on 1 July 2017 with the first reporting date on 31 July 2018.

In late 2015, the Government introduced a new third party reporting regime designed to provide the ATO with more data for pre-filling of income tax returns for individuals and for compliance and data matching activities. Under this regime, affected entities (including government related entities, ASIC, listed companies and trusts, fund managers and custodians, and banks) have a new, annual obligation to report information to the ATO regarding a wide range of transactions such as government grants and payments to suppliers, transfers of real property, transfers of shares and units and business payments. See our [TaxTalk Alert](#) of 2 November 2015 for more information.

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## Tax compliance and foreign investment in Australia



**Status:**

In effect now

In February 2016 the Treasurer announced that in applying the ‘national interest test’ to the approval of foreign investment proposals, a number of new conditions will be applied to ensure that foreign investors are fully compliant with Australian tax laws. These conditions include requirements relating to the settlement of outstanding tax debts, ongoing compliance with tax laws, notification of any material transactions to which the transfer pricing or anti-avoidance provisions may apply and annual reporting to the ATO.

These new conditions formalise and extend the consideration of tax issues in the assessment of Australia’s national interest and show a convergence of the debates relating to foreign investment regulation and the BEPS agenda. Treasury has indicated that a guidance note will be released soon to provide additional information on the conditions. See our [LegalTalk Alert](#) of 24 February 2016 and subsequent [LegalTalk Alert](#) of 4 May 2016 for further details.

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## The future of transparency

As the move towards increased transparency both in Australia and globally continues to gain momentum, it is likely that we will see other measures being adopted in Australia.

Most recently, the Government announced that it would consult on three additional measures to increase tax transparency in Australia. These are:

- The introduction of a Mandatory Disclosure Regime (MDR) for tax schemes. Action 12 of the OECD’s BEPS Action Plan set out a recommendation for a framework for countries wishing to implement a mandatory disclosure regime for tax schemes. The Government announced as part of the 2016-17 Federal Budget that it will adopt this framework. The proposed Australian MDR will require tax advisers and taxpayers to make early disclosures of aggressive tax arrangements by providing the ATO with timely information on arrangements that have the potential to undermine the integrity of the tax system. Treasury released a

discussion paper regarding implementation of the MDR in Australia on Budget night, with submissions due by 15 July 2016.

- Implementation of the Extractive Industry Transparency Initiative (EITI) in Australia. The Government announced, just before the dissolution of Parliament for the Federal election, that Australia will join the EITI, a global initiative to enhance the transparency around revenues from natural resources. The EITI is an international standard under which governments prepare an annual report disclosing how much revenue they receive from extractive companies operating in their country and those companies disclose how much tax they pay. No timeframe has been announced for the implementation of this initiative in Australia.
- Establishing a public register of beneficial ownership. The Government also announced recently that it would explore options for a public register of beneficial ownership of companies. No further details are known.

The Government also announced as part of the 2016-17 Federal Budget that it will introduce new arrangements to better protect individuals who disclose information to the ATO on tax avoidance behaviour and other tax issues. This measure is to take effect from 1 July 2018 and under the new arrangements, individuals, including employees, former employees and advisers, disclosing information to the ATO will be better protected under the law.

It is also worth noting the recent activity over the past 18 months or so of the Senate Standing Committee on Economics which has been conducting an inquiry into “tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia”. Whilst this inquiry was still ongoing at the time of the dissolution of Parliament, the Committee published two interim reports in August 2015 and April 2016. The August 2015 report made 17 recommendations, many of which focused on increased transparency including:

- implementation of a mandatory tax reporting code
- establishing a public register of tax avoidance settlements reached with the ATO where the value of that settlement is over an agreed threshold, and
- the Government to consider publishing excerpts from CbC reports (this is being considered by some other OECD countries including the United Kingdom and the European Union).

In the April 2016 report, the Committee reiterated its position that greater transparency in tax affairs is important both for addressing profit shifting by multinationals and maintaining public confidence in the integrity of the tax system and reinforced the recommendations from the August 2015 report.

The Government did not release any formal response to these reports at the time of their release, and with the Federal election taking place in July, whether any of these recommendations are ultimately adopted by the current or future Government remains to be seen.

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## *The takeaway*

Whilst the level of interest in taxes paid by businesses continues to increase, tax transparency regimes will likely continue to be an area of focus for governments both in Australia and around the globe. Transparency regimes ensure that tax authorities have the information they need to appropriately administer the law, and public regimes can go some way to help ensure that the broader community has relevant information to be informed about the tax contributions of multinational companies. Australian companies operating overseas will not only have the Australian transparency measures outline above to deal with, but will also have to factor in and apply transparency regimes in foreign jurisdictions.

As a starting point, affected businesses should be asking these questions:

- Do we understand which transparency measures apply to our business?
- Do we have the people, processes and technology in place to meet our obligations?



- How are your key stakeholders (including the general public, consumers and suppliers, employees, investors and regulators) likely to react to the information being provided under these measures?

It is clear that the trend towards increased tax transparency is not likely to slow down and will remain a real issue that all businesses will need to grapple with at some point. Understanding and managing your obligations, and building trust with stakeholders in the new environment of transparency is critical. In this fast changing environment PwC can help you understand transparency and what it means for your business and your stakeholders.

## **Let's talk**

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