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# Third Party Reporting - who has an obligation to report to the ATO?

2 November 2015

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## ***In brief***

The Australian Government is introducing a new third party reporting regime designed to equip the Australia Taxation Office (ATO) with more data to enable pre-filling of income tax returns for individuals and for compliance and data matching activities.

Under the proposed regime, which is currently before Parliament, affected entities (including government related entities, the Australian Securities and Investment Commission (ASIC), listed companies and trusts, fund managers and custodians, and banks) will 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.

For most affected entities, the first reporting obligation is still more than two years away and while the intention of this new reporting regime is to complement and enhance existing reporting obligations, affected entities should start considering the impacts early in order to assess the extent to which other regulatory change projects (e.g. FATCA, CRS and/or AML/KYC) could be leveraged from a people, process and technology perspective to deliver a solution for these additional reporting obligations.

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## ***In detail***

On 15 October 2015, *Tax and Superannuation Laws Amendment (2015 Measures No 5) Bill 2015* was introduced into Federal Parliament, and includes amendments to the *Taxation Administration Act 1953* to introduce a new third party reporting regime covering a range of transactions and payments. Entities with a reporting obligation under the proposed new regime will be required to report information on these transactions to the ATO for its use in pre-filling tax returns for individuals, and compliance and data-matching activities.

Relevant third parties will be expected to report information to the ATO on transactions that could reasonably be expected to have tax consequences for other entities. The entity with the reporting obligation will not, however, be required to determine whether a tax-related liability arises for the parties to the transaction. Initially, the information collected under this regime will relate to income tax only, but this may be expanded to include other tax-related liabilities in the future including goods and services tax (GST), excise duty, various withholding taxes and administrative penalties.

The various transactions covered under the regime, and the entities required to report are set out in the table on the following page. Whilst Government-related entities and ASIC will be heavily impacted by these new measures, listed companies and trusts, fund managers, custodians and financial intermediaries will also have new reporting requirements to the ATO.

<b>Transaction</b>	<b>Who has the reporting obligation?</b>	<b>Commencement date</b>
Payments of government grants	Government related entities, other than local governing bodies, will be required to report information on grants made to entities that have an Australian Business Number	Transactions occurring on or after 1 July 2017
Consideration provided for services to government entities	Government related entities will be required to report information on the consideration for the supply of services	Transactions occurring on or after 1 July 2017
Transfers of real property	States and territories, usually the land titles office, will be required to report information in respect of transfers of both freehold and leasehold interests	Transactions occurring on or after 1 July 2016
Transfers of shares and units in unit trusts	ASIC will be required to report information in relation to on-market transactions that are reported to ASIC under market integrity rules applicable under s769G of the <i>Corporations Act 2001</i>	Transactions occurring on or after 1 July 2016
	Market participants as defined under s761A of the <i>Corporations Act 2001</i> (ie, brokers) will be required to report information in relation to on-market transaction that are required to be reported to ASIC under market integrity rules. This information will supplement the information reported by ASIC which does not contain sufficient detail to identify parties to a transaction.	Transactions occurring on or after 1 July 2017
	Listed companies will be required to report information in relation to off-market transactions (eg, off-market transfers, demergers, in specie distributions) that are not required to be reported to ASIC under market integrity rules	Transactions occurring on or after 1 July 2017
	Trustees of listed unit trusts will be required to report information in relation to off-market transactions that are not required to be reported to ASIC under market integrity rules that results in a change to the type, name or number of units in the trust held by an entity	Transactions occurring on or after 1 July 2017
	Trustees of unlisted unit trusts will be required to report information in relation to a transaction that results in a change to the type, name or number of units in the trust held by an entity	Transactions occurring on or after 1 July 2017
Business transactions made through payment systems	Trustees of trusts that do not lodge a trust income tax return and hold shares or units in units trusts to which beneficiaries are absolutely entitled (eg custodians), will be required to report information in relation to transactions that result in a change to the type, name or number of any shares or units held by the trust	Transactions occurring on or after 1 July 2017
	Administrators of payment systems (eg banks, online payment service providers, debit and credit card merchants) will be required to report information in respect of those transactions they reasonably believe are for the purpose of carrying on a business	Transactions occurring on or after 1 July 2017

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The Commissioner of Taxation may provide an exemption from the third party reporting regime for specific entities or classes of entities, and/or specific classes of transactions, taking into consideration of variety of circumstances including the compliance costs imposed on the entity, the availability of information and the Commissioner's ability to use the information.

Additionally, there is a broad exemption for information relating to certain wholesale clients, such that information is not required to be reported to the extent it relates to a party to the transaction that is not an individual and that is being provided a financial product or service under a transaction as a wholesale client.

### ***What information will be reported?***

The proposed law does not specify the type of information to be reported, but does indicate that the information that is required to be reported in the "approved form":

- relates to the identification, collection or recovery of possible tax-related liability of a party to the transaction (disregarding any exemption that may apply to those parties)
- may relate to identifying the parties to the transaction, and
- for a transfer of real property, may include the tax file numbers of those parties to the transaction who have quoted their tax file numbers to the State or Territory concerned.

The ATO has been, and continues to, undertake extensive consultation with stakeholders to agree on the approved format and extent of reported information. Further details can be found on the ATO's [Let's Talk](#) website, including draft guidance for entities required to report under this regime and draft reporting specifications.

It is likely that, to the extent possible, these new reporting requirements will be streamlined with other reporting regimes already in place to reduce compliance costs and avoid duplication (for example, it is expected that fund managers will report via the Annual Investment Income Report or AIIR).

### ***When will the report be due?***

In most cases, the reporting obligations first commence for transactions occurring on or after 1 July 2017, giving rise to a report for the year ended 30 June 2018 which will be due to the ATO by 31 July 2018.

The exception is transfers of real property and reports by ASIC which will be required to be reported from 1 July 2016, giving rise to a report for the year ended 30 June 2017 which will be due to the ATO by 31 July 2017.

The due date of 31 July is subject to any allowed extension of time and administrative penalties will apply for failing to report by the due date.

The Commissioner will have the ability to change the frequency of the reporting obligation in the future, and it is anticipated that the reporting obligation will become more frequent as technology and systems evolve.

### ***The takeaway***

The reporting obligations under the new regime will be onerous for some affected entities and may require systems upgrades to enable the requisite information to be captured and reported to the ATO. For most affected entities, these processes will need to be in place by 1 July 2017.

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***Let's talk***

For a deeper discussion of how these issues might affect your business, please contact:

Michael Bersten, Sydney  
+61 (2) 8266 6858  
[michael.bersten@au.pwc.com](mailto:michael.bersten@au.pwc.com)

Gavin, Marjoram, Sydney  
+61 (2) 8266 0576  
[gavin.marjoram@au.pwc.com](mailto:gavin.marjoram@au.pwc.com)

Ken Woo, Sydney  
+61 (2) 8266 2948  
[ken.woo@au.pwc.com](mailto:ken.woo@au.pwc.com)

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