
Tax transparency in Australia

The current state of play

29 March 2018



In brief

The global tax landscape continues to undergo rapid change, 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 many areas, Australia is the 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.

In detail

Public transparency

Public reporting of tax information



Status:

Law enacted. Third year reports covering 2015-16 income year published in December 2017.

December 2017 saw the third 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).

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 AUD 100 million (as disclosed in its income tax return), except Australian-owned private companies with total income of less than AUD 200 million.	<ul style="list-style-type: none">• Name• Australian Business Number• Total income for the year *• Taxable income (if any) for the income year *• Income tax payable (if any) for the income year * <p><small>*As reported in the taxpayer's income tax return.</small></p>
All PRRT taxpayers	<ul style="list-style-type: none">• Name• Australian Business Number• Amount of PRRT payable for the year

Only the Nordic Countries (Denmark, Sweden, Finland & Norway) have laws under which similar information can be publicly disclosed by Tax Authorities. For the most recent information disclosed by the Australian Taxation Office (ATO) in December 2017, the Commissioner published data for more than 2000 large entities (comprising more than AUD 38 billion or almost 60 per cent of the total company tax payable for 2015-16).

There were many press articles following the ATO release of the December 2017 data – numerous commentators noted that more than one-third of companies paid no tax in 2015-16. It's unfortunate that this issue has been the primary media focus as there are often good reasons why large companies do not have a

current year tax liability, including current year losses, tax losses carried forward or tax offsets such as the research and development (R&D) incentive.

The Australian Labor Party has introduced a private Senator's Bill to Parliament which would require the ATO to disclose the above-mentioned tax information for private companies with turnover more than AUD 100 million annually. If this is enacted, it will bring the turnover threshold for private companies in line with other companies. It is expected a further 1500 companies would then be subject to the ATO disclosures.

Financial reporting for 'significant global entities' (SGEs)



Status:

Law enacted. Commences from 1 July 2016. Transitional administrative concession applicable for first year.

From June 2017, so-called 'significant global entities' (SGEs – entities that are members of groups with turnover of AUD 1 billion or more) that are required to file an income tax return in Australia must lodge general purpose financial statements (GPFS) with the ATO when they lodge their tax return, unless these entities already lodge GPFS with the Australian Securities and Investments Commission (ASIC).

The legislation, introduced in December 2015 and applicable for years commencing on or after 1 July 2016, raised a number of queries around implementation issues. A key issue was whether Australian subsidiaries of multinational groups could provide the consolidated financial statements of an overseas parent entity to satisfy their obligations under the new tax legislation. After consulting with stakeholders since August 2016, the ATO finally provided web guidance and information for 30 June 2017 year-ends on 28 September 2017.

The ATO interpretation of these rules will generate substantial additional compliance costs for many foreign multinational groups operating in Australia. In recognition of this last minute and unexpected interpretation, the ATO is providing a one year amnesty for most affected companies as well as a lodgment extension until 4 April 2018 (30 June 2017 year ends) – see comments under Transitional administrative approach below.

The entities that will be most affected by the new legislation are the following SGE members:

- Foreign owned companies that are currently lodging special purpose financial statements (SPFS) with ASIC, and
- Grandfathered exempt proprietary companies not required to lodge any financial statements with ASIC.

Small foreign owned proprietary companies that are not currently required to lodge any financial reports with ASIC as they are not part of a large group in Australia may also be impacted. The ATO guidance is unclear but seems to imply that these entities are required to lodge consolidated GPFS that comply with Australian accounting standards and that consolidated GPFS of a foreign parent entity prepared under a foreign accounting framework may not be acceptable.

Comments have been requested in respect of this aspect of the ATO guidance. The ATO view of the relevant tax legislation is not free from doubt and does not, for example, address statements made by Government ministers during the passage of this legislation. We also note that the ATO has issued a 'web guidance and information' rather than a legally binding ruling. PwC continues to engage with the ATO in respect of their guidance on this issue. Further details can be found in our [TaxTalk Alert](#), published on 28 September 2017.

Transitional administrative approach

The ATO has acknowledged the difficulties, additional costs and risk of substantial penalties that affected taxpayers may face with the interpretation that they have decided to adopt. As a result, in the absence of any further administrative concessions, for the first year only, the ATO "will not review whether a GPFS given to the Commissioner is a GPFS prepared in accordance with Australian accounting standards", as long as it is prepared consistently with another country's commercially accepted accounting principles. In effect, this is a one year optional amnesty for most taxpayers.

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 AUD 500 million) and slightly less disclosure for 'medium businesses' (Australian turnover of at least AUD 100 million but less than AUD 500 million), as set out in the table below.

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

In May 2017, the Australian Accounting Standards Review Board (AASB) released draft guidance on how businesses calculate their effective tax rate (ETR) for inclusion in their Voluntary TTC reports. The guidance, contained in a Draft Appendix to the TTC, promotes consistency and comparability of key information about entities' tax positions, in particular, their ETR relative to the corporate tax rate.

As at 1 March 2018, there were 126 signatories to the TTC and 91 signatories have published a tax transparency report. The CTA (Corporate Tax Association) estimates that these entities comprise approximately 62 per cent of taxable income and 61 per cent of tax payable by entities subject to the public reporting requirements (approximately 1500 entities).

The Government has, at times, expressed concern about 'the level of take-up' of the voluntary code given the potential population of 1500+ entities. There is no current plan for the Government to make the code mandatory. It has been suggested, however, that the Government could tie bidding for government contracts to signing up for the TTC. The Treasurer also expects that Government enterprises should have signed up for the code.

Justified Trust

The ATO has stated that it intends to apply its Justified Trust methodology to tailor its compliance activities to particular taxpayer circumstances when conducting its audits/reviews.

Recently, the ATO has released draft templates of its Tax Assurance Report (for Top 100 companies highlighting the ATO conclusions and focus areas for annual Pre Compliance Reviews – PCRs) and Streamlined Tax Assurance Reports (for the Top 1000 Streamlined Assurance Reviews – a four month ATO review for companies with turnover of AUD 250 million or more).

Importantly, these Reports will include a paragraph in the covering letter to taxpayers either commending taxpayers for publishing a TTC or encouraging taxpayers to register for the TTC. The ATO clearly view signing up for the TTC as a key component in its Justified Trust Assessment of taxpayers.

Reportable Tax Position (RTP) Schedule

In 2011 the ATO introduced the RTP schedule as a pilot to 'higher risk' taxpayers (broadly, the Top 1000 taxpayers), to be lodged with the company income tax return. However, a number of those taxpayers were in an advance compliance arrangement (ACA) with the ATO, which provided an exemption from completing the RTP schedule.

The ATO recently confirmed that it is extending the obligation to complete the RTP schedule to companies in economic groups with a turnover of greater than AUD 250 million, commencing from years ending on or after 30 June 2018. A company will only be required to complete the RTP schedule if notified to do so by the ATO. Taxpayer notifications commenced in the first week of August 2017.

The taxpayers in this 'Top 1000' group are unlikely to be in an ACA and thus the RTP schedule represents a real expansion to their compliance obligations. The RTP schedule requires the taxpayer to provide information under the following categories:

- Category A – Tax Uncertainties in the Tax Return – a material position that is about as likely to be correct as incorrect, or less likely to be correct than incorrect, having regard to relevant authorities.
- Category B – Tax Uncertainties in the Financial Statements – a material difference between positions disclosed in the financial statements and the income tax return.
- Category C – Reportable arrangements – an arrangement that is listed in the Guide to Reportable Tax Positions. These items have generally been the subject of Taxpayer Alerts. There is no materiality threshold applied to Category C.

The RTP schedule disclosures will be used by the ATO to focus its compliance activities. Taxpayers therefore should understand their RTP reporting obligations and formulate a strategy for managing their RTP risk.

Regulatory transparency

Common Reporting Standard (CRS)



Status:

Law enacted. First reporting date is 31 July 2018.

From 1 July 2017, Australian Financial Institutions are required to apply the CRS in Australia. The CRS is very similar to reporting under the Foreign Account Tax Compliance Act (FATCA) (which has applied to these financial institutions since 1 July 2014); however it will have a much broader application and will run parallel (and in addition) to FATCA.

The CRS is the single global standard for the collection, reporting and exchange of the financial account information on foreign tax residents. Banks and other financial institutions will collect and report to the ATO for financial account information on non-residents using the standard. The ATO will exchange this information with participating foreign tax authorities of those non-residents. In parallel, the ATO will receive financial account information on Australian residents from other countries' tax authorities. This will help ensure Australian residents with financial accounts in other countries comply with Australian (tax) law and deter tax evasion.

Financial institutions such as banks and other deposit taking institutions, custodial institutions, investment entities, and specified insurance companies are required to report under the CRS. The reported financial account information includes details of the account holder, interest, dividends account balance or value and

other income generated, or payments made, with respect to the account. An Australian complying superannuation fund will not be required to register with, or report under the CRS.

The Tax Laws Amendment (Implementation of the Common Reporting Standard) Act 2016 took effect in Australia from 1 July 2017. From this date, Reportable Financial Institutions are required to complete due diligence and report information to the ATO on accounts held by foreign tax residents. The first report, covering the period 1 July 2017 to 31 December 2017, will need to be lodged with the ATO by 31 July 2018. Following reports will cover the full calendar year due annually by 31 July.

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



Status:

Law enacted. First reporting dates was 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).

Legislation to implement new standards for transfer pricing documentation and CbC reporting, developed as part of Action 13 of the G20 and Organisation for Economic Cooperation and Development's (OECD) Action Plan on Base Erosion and Profit Shifting (BEPS), has been enacted in Australia.

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 for Australian SGEs, or CbC report lodgment jurisdiction details for non-Australian SGEs, 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 issued guidance on the application of the new CbC rules in the form of Law Companion Ruling LCR 2015/3 which is binding on the Commissioner. Although the ATO has indicated that the new CbC disclosure 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 CbC reporting obligations are intended to provide relevant and reliable information to assist the Commissioner carry out transfer pricing risk identification for potential further review, and to enable information sharing with tax authorities in other jurisdictions. Australia is currently one of over 65 countries to have signed the Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of CbC reports.

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 Australian 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.

Tax compliance and foreign investment in Australia



Status:
In effect now.

In February 2016, the Australian 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.

Foreign resident capital gains withholding payments



Status:
In effect now.

Changes were made to the foreign resident capital gains withholding (FRCGW) regime so that for contracts entered into on or after 1 July 2017:

- for real property disposals where the contract price is AUD 750,000 and above (previously AUD 2 million)
- the FRCGW withholding tax rate is 12.5 per cent (previously 10 per cent).

These rules broadly apply where a foreign resident disposes of certain taxable Australian property – in these circumstances, the purchaser is required to withhold an amount from the purchase price and pay that amount to the ATO.

GST on property transactions



Status:
Bill currently before Parliament. Changes effective 1 July 2018.

On 9 May 2017 (2017-18 Federal Budget) the Government announced it would strengthen compliance with Australia's goods and services tax (GST) law by requiring purchasers of newly constructed residential properties or new subdivisions to remit the GST directly to the ATO as part of settlement.

This measure aims to deal with the issue that some developers have been failing to remit the GST which is included as part of the sale price to the ATO, despite having claimed GST credits on their construction costs.

The change is proposed to take effect from 1 July 2018. However, there is a two-year transitional arrangement which will exclude from the Budget measure, contracts signed before 1 July 2018 as long as the transaction settles before 1 July 2020. This will provide certainty for contracts that have already been signed.

The future of transparency

As the move towards increased transparency both in Australia and globally continues to gain momentum, we can expect to see other measures being adopted in Australia.

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 sets 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; the Board of Taxation was subsequently asked to undertake consultation and provide advice on implementation issues.
- **Implementation of the Extractive Industry Transparency Initiative (EITI) in Australia:** The Government announced in 2016 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. A Multi-Stakeholder Group (MSG) was established on 23 November 2016 to oversee the Extractive Industries Transparency Initiative (EITI) process in Australia. Australia has not yet formally applied for EITI Country status as the MSG has not yet finalised its EITI candidacy application.
- **Establishing a public register of beneficial ownership:** The Government announced in 2016 that it would explore options for a public register of beneficial ownership of companies. In March 2017, Treasury released a public consultation paper seeking views on the details, scope and implementation of a beneficial ownership register for companies. The consultation also considered the use of nominee shareholdings to conceal beneficial ownership. This matter is currently with the Government.
- **Improving whistle-blower protections in the tax and corporate sectors:** In the 2016-17 Budget, the Government announced the introduction of new arrangements to better protect tax whistleblowers as part of its commitment to strengthening the integrity of Australia's tax system. Currently, there are no specific protections for tax whistleblowers and the current range of tax secrecy and privacy provisions are incapable of guaranteeing absolute protection. The Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017, which is currently before Federal Parliament, proposes to introduce whistle-blower protections for people who disclose information about tax misconduct to the ATO and strengthens/harmonises corporate whistle-blower protections with those available in the public sector.

Alternative policy

Over the last two years, the Australian Labor Party (ALP) has made numerous policy statements about “Big Multinational Companies Should Pay Their Share of Tax” – these policies are summarised [online](#).

In addition to restoring the AUD 100 million threshold for reporting the tax affairs of large private companies above, the ALP have made the following commitments:

- Public reporting of Worldwide Tax Affairs (CbC Reports) – such Reports are currently only shared by revenue authorities and are not ‘public’.
- Require companies to disclose tax haven risks to investors.
- Establish a Public Register on Beneficial Ownership (of companies, trusts and other corporate structures).
- Make publicly available data on cash-flows to tax havens (via AUSTRAC).
- Government tenders – all companies must state where they pay their tax when applying for Government tenders.
- ATO Aggressive Tax Minimisation Settlement Reporting – High-level reporting in the ATO’s annual report on how many settlements were achieved (above AUD 50 million) and associated data.

The takeaway

Whilst the level of interest in taxes paid by businesses continues to increase, tax transparency regimes will 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 outlined 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

For a deeper discussion about transparency and stakeholder trust, contact:



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