
Tax Transparency Code – what you need to know

17 December 2015

In brief

On 11 December 2015, the Board of Taxation (the Board) released a consultation paper on the voluntary tax transparency code (TTC). The paper contains the Board's preliminary recommendations for additional 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). The Board considered that the TCC should be in operation in time for the reporting period for 2015-16 financial statements or annual reports.

In detail

Background

The Government commissioned the Board to develop the TTC as a way to improve community confidence in the tax system and to encourage all businesses to adopt a low-risk approach to their tax affairs through enhanced public disclosure. The TTC will be a set of principles and minimum standards of content to guide disclosure of tax information by large and medium businesses. The proposed measures reflect an international trend of countries mandating or encouraging greater transparency of tax information. Most recently, the Parliament passed legislation requiring certain multinational entities (those with global turnover of greater than \$1b) to provide general purpose financial accounts to the Commissioner of Taxation, where they are not currently already lodged with the Australia Securities and Investments Commission (ASIC).

The Board has actively consulted with a wide range of stakeholders including industry, tax practitioners and members of community interest groups in developing its consultation paper. The Board has acknowledged the need to balance public interest in increased transparency with the concerns of some businesses around issues such as compliance costs, commercial confidentiality, misunderstanding of published information, etc. The paper recognises that in achieving the balance, there is a general need for improving the level of community understanding of business taxation and improving community confidence. It is noted that the Australian Taxation Office (ATO) has a role to play in this through monitoring corporate tax performance, providing assurance to the public that there is a robust legislative and administrative framework and educating the public about how Australia's taxation rules operate.

In designing the framework for the TTC, the Board identified three categories of potential users of the information. They are;

1. General users – the ‘person in the street’
2. Interested users – shareholders, analysts, investors, social justice groups, media and politicians, and
3. Revenue and regulatory authorities – the ATO and ASIC.

The TTC has been explicitly designed for the first two categories of users, recognising that the ATO already has access to all of the information it needs through tax returns, supporting schedules and information it obtains directly from businesses.

The Board is requesting submissions on the proposals set out in the consultation paper by 29 January 2016.

Will it affect you?

In developing the TTC the Board has created different recommendations for different categories of business.

Large businesses	Companies and groups operating in Australia (Australian-headquartered and foreign multinationals) with aggregated Australian turnover of at least \$A 500 million.
Medium businesses	Companies and groups operating in Australia (Australian-headquartered and foreign multinationals) with aggregated Australian turnover of at least \$A 100 million but less than \$A 500 million.

Companies below the above thresholds will not be expected to adopt with the TTC. It is expected that the TTC will generally not be adopted by partnerships, trusts and superannuation funds unless they feel the need to do so.

What will need to be disclosed under the TTC?

As noted above, the recommended TTC disclosures will differ depending on the category of the business.

The Board’s preliminary recommendation is that:

- Medium businesses should adopt Part A, which involves improvements to tax disclosures in financial statements (Part A), and
- Large businesses should adopt Part A and also Part B which is the preparation of an annual ‘taxes paid’ report.

The recommendations in Part A and Part B are summarised below.

Part A — entails the following disclosures:	<ol style="list-style-type: none"> 1. A reconciliation of accounting profit to tax expense and to income tax paid or income tax payable. <ul style="list-style-type: none"> • A reconciliation at a global level is acceptable. • Where Australian general purpose accounts are not prepared, disclosure should be made in the ‘taxes paid’ report or another document (explained further below).
	<ol style="list-style-type: none"> 2. Identification of material temporary and non-temporary differences.

	3. Accounting effective company tax rates (ETRs) for Australian and global operations.
Part B — entails the following disclosures:	1. Qualitative description of the approach to tax policy, tax strategy and governance. <ul style="list-style-type: none"> • Overview of internal governance and controls in relation to taxation, approach and attitude towards tax risk management, tax planning and relationship with the ATO and other tax authorities. • Disclosure of disputes with the ATO/other revenue authorities is not recommended.
	2. Total tax contribution summary of corporate taxes paid. <ul style="list-style-type: none"> • Core element: Disclosure of corporate income tax. • Optional element: Disclosure of other taxes and imposts paid e.g. Petroleum Resources Rent Tax, royalties, excises, payroll taxes, stamp duties, fringe benefits tax and state taxes. • Optional element: Disclosure of Government imposts collected by the business on behalf of others e.g. GST and PAYG withholding
	3. Qualitative information about international related party dealings, financing and tax concessions. <ul style="list-style-type: none"> • This would include a qualitative explanation of the nature of related party dealings and measures that have been put in place to manage tax risks. • The Board has concluded that quantitative information raises issues of commercial sensitivity and may not be meaningful to intended users.

How should the disclosures be made?

The Board recommends that companies that prepare Australian general purpose accounts include the Part A disclosures as part of those accounts. Businesses that do not prepare general purpose accounts would be expected to include the Part A disclosures in a separate document.

The ‘taxes paid’ report is separate from the financial statements and is expected to be made public. The Board does not intend to prescribe a standard template or form for the report. It is anticipated that many businesses will publish more than the minimum standard of content for the TTC due to their corporate approach to transparency, international transparency requirements or because their particular circumstances warrant further explanation.

The Board also recommends that a ‘responsible agency’ (possibly the ATO or another government agency) be appointed for the purpose of administration of the TTC. Businesses would be expected to notify the ‘responsible agency’ when the report is published on the website.

There is no proposed requirement for the disclosures to be audited, other than those that are made through the financial statements which are already subject to audit requirements. It is expected that

businesses will already obtain significant assurance on much of the content through external and internal audit processes.

Further, it is not proposed that there be further oversight or that penalties be imposed for misleading disclosure. The Board expects that senior management will sign off the disclosures and the reputational impact of being found to make misleading statements will be sufficient.

There is no proposed timeframe for the preparation of the 'taxes paid' report, but it is recommended to apply from the FY 2015/16 reporting period.

What does not need to be disclosed?

The Board has clearly considered carefully a number of proposals from various stakeholders in terms of possible items that could be disclosed publicly as part of the TTC. In developing its proposal, it has considered and rejected the following;

- The new OECD Country by Country report which is intended for tax authorities and is not designed for public disclosure;
- Requiring foreign companies that make sales or supplies to Australian customers and are not subject to Australian corporate tax, to disclose sales to Australian customers. It was noted that recently enacted legislation (the so-called Multinational Anti-Avoidance Law) will create an incentive for relevant foreign multinationals to restructure their business and create a taxable presence in Australia. This will in turn, bring them within the scope of the TTC.
- Publishing ETRs calculated using the ATO's Effective Tax Borne methodology as it is considered too complex and not suitable for public disclosure under the TTC.

The takeaway

The Board has taken a carefully considered and balanced approach to a highly sensitive topic. In doing so, the Board has consulted widely and had to balance many competing views and proposals.

The proposed TTC may potentially apply to a wide range of Australian-parented companies and multinationals with operations in Australia. The proposed approach has taken care to set the minimum standards at a level that seeks to best preserve commercially confidential information and limit compliance costs, while at the same time, make a meaningful contribution to demands for greater tax transparency in Australia. There is flexibility for companies to disclose more, should they choose to do so, and there is an emphasis on providing qualitative explanations over raw numbers.

Written submissions in relation to the consultation paper are due by 29 January 2016, with the Board due to release its final report due by May 2016.

Let's talk

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