

2nd February 2016

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

Tax Transparency Code – Consultation Paper

Brambles Limited welcomes the opportunity to comment on the proposed voluntary Australian tax transparency code (“TTC”).

Subject to the comments below, Brambles Limited supports the introduction of a voluntary TTC.

In summary, Brambles Limited’s comments on the voluntary TTC are as follows:

- 1. Timing** – the introduction of a TTC should be on a prospective, and not retrospective basis. Accordingly, assuming the final report is released, and adopted by the Government, by June 2016, then it should first apply to years commencing from 1 July 2016;
- 2. International consistency** – the voluntary TTC code should be developed progressively, and consistently, with transparency initiatives in other countries. Brambles Limited operates in over 60 countries, and if Australia releases a TTC without regard to international consistency, this will over time lead to a significantly increased compliance burden and cost for multinational enterprises like Brambles. Accordingly, we recommend at this time Australia adopts a ‘taxes paid’ report consistent with the proposed regime to be introduced in the UK (refer Appendix A);
- 3. Governance** – whilst Brambles agrees the ‘taxes paid’ report should include a company’s approach to risk management, we believe the detailing of actual tax controls and the measures for testing and assurance of controls is too detailed for a ‘taxes paid’ report intended for the use of ‘general users’ and ‘interested users’. Similarly, the inclusion of a description of the particular assurance regimes a business is subject to is too detailed for this particular type of report;
- 4. International related party dealings** – international related party dealings are inherently complex. In Brambles’ view, such information should not be included in a ‘taxes paid’ report, as its complexity significantly increases the risk it is misunderstood, and ultimately, misreported.

These points are discussed in greater detail below.

1. Timing

We note the Board’s comment that it intends to release its final report in time for reporting of the 2015-16 year (i.e. the year ending 30 June 2016).

As noted above, introducing a regime in June 2016 to apply from 1 July 2015 is retrospective in its application, and Brambles believes, is unworkable. For example, it is unrealistic to expect companies to capture information related to taxes paid, as this will likely require systems changes.

We note that typically such measures have been adopted prospectively (as noted below) and see no compelling reason for retrospectively in this case:

- The tax transparency measures under Section 3C of the Tax Administration Act 1953 were introduced in 2013, first applicable to the 30 June 2014 year, with information released in December 2015;
- Australia’s adoption of the OECD/BEPS transfer pricing master file and country files and country by country reporting, will apply prospectively from the year ending 30 June 2017.

The UK also proposes to introduce its tax transparency measures (as set in Appendix A) on a prospective basis from the 2017 year.

2. International Consistency

At 4.1 of the consultation paper, the Board states that:

“in designing the proposed TTC, the Board sought to balance the public interest in increased transparency of tax information with the concerns of some businesses. These concerns include... lack of consistency in transparency initiatives between countries.”

Brambles agrees that any TTC code should be developed consistently with other countries. Accordingly, we would recommend that at this stage the Australian voluntary TTC minimum standard be consistent with the UK principles (as set out in Appendix A), and amended over time as more internationally accepted transparency initiatives are introduced. Companies could, of course, voluntarily disclose more than this minimum standard.

As noted above, Brambles operates in 60 countries, and if Australia and other countries adopt transparency measures without any real regard for consistency, this will over time create a significant compliance burden for Brambles and other multinational enterprises.

3. Governance

Brambles agrees the ‘taxes paid’ report should include a company’s approach to risk management, however, as a minimum standard, we believe the exact content of this should remain broad.

The detailing of actual tax controls and the measures for testing and assurance of controls is too detailed for a ‘taxes paid’ report intended for the use of ‘general users’ and ‘interested users’. We note in this regard, the Board’s reference to the ATO ‘Tax risk management and governance review guide’. Whilst this is clearly relevant for the ATO assessing risk of an organisation, we do not think it is appropriate for a high level ‘taxes paid’ report – the ATO guide lists approximately 60 examples of tax controls in this regard.

Similarly, the inclusion of a description of the particular assurance regimes a business is subject to is too detailed for this particular type of report and in our view not particularly relevant for public disclosure.

4. International related party dealings

The Board states at page 16 of its report that:

“There is a public interest in ensuring that international related party dealings are being conducted in a manner consistent with Australian tax law and international taxation norms (the arm’s length principle).”

The Board also notes in section 4.1 that any disclosure should be balanced against the misunderstanding of published information.

Transfer pricing is a highly complex and specialist area of taxation law. As noted above, even providing qualitative disclosure of key categories of dealings with offshore related parties, including the nature of material categories of dealings and the country in which the related party is located, has a high likelihood of being misunderstood by intended recipients.

As previously stated, Brambles operates in 60 countries, and apart from the compliance burden, Brambles is concerned that any disclosure in such a complex and specialist area has a high likelihood of misunderstanding of the information disclosed.

As a specialist area and focus of taxation authorities, the ATO is the right recipient of such related party dealings information. We note that the ATO already has a detailed International Dealings Schedule as part of the income tax return filing, and in the future will receive a transfer pricing master file, local files and country by country reporting information, as part of the OECD/BEPS initiatives.

If you have any queries in relation to this submission, please do not hesitate to contact me.

Yours sincerely

Martin Renwick
Group Vice President Taxation

APPENDIX A

PROPOSED UK TAX TRANSPARENCY MEASURES

The UK proposes that where an entity meets the reporting requirements, the minimum information which must be made publically available is:

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