



SUBMISSION

Submission to The Board of  
Taxation's Tax Transparency Code  
Consultation Paper

FEBRUARY 2016

*Working to achieve  
economic, social  
and environmental  
goals that will benefit  
Australians now and  
into the future*

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The Business Council of Australia (BCA) is a forum for the chief executives of Australia's largest companies to promote economic and social progress in the national interest.

## **Executive Summary**

### **Introduction**

The Business Council of Australia welcomes the opportunity to provide a submission in response to the Board of Taxation's Tax Transparency Code consultation paper.

The Business Council's starting position is that businesses in Australia must meet their tax obligations and do so in a transparent way. Australia's integrity measures, institutions, enforcement and high standards of corporate governance all contribute to a high level of compliance with our tax system. At the same time, the tax system should not act as an impediment to trade and investment, which will be critical for future economic growth.

The Tax Transparency Code (TTC) will be an important addition to Australia's already robust suite of tax integrity measures, and the Business Council will encourage member companies to adopt it. It appropriately balances multiple objectives, including improved communication with interested stakeholders, providing a minimum standard rather than a prescriptive approach, and allowing companies the flexibility to minimise compliance costs. Companies will have scope to build a narrative and provide context around their tax profile, something that the publication of aggregate data does not always facilitate.

Upon the introduction of the TTC, corporate tax disclosure in Australia will be among the most advanced in the world.

Additional disclosure by companies should impose a reciprocal obligation on those engaging in the tax debate and analysing tax data to be rigorous and to understand the operational elements that underpin and explain a company's tax affairs, including the distinction between tax and accounting treatments. Misinterpretation and misrepresentation of facts can unnecessarily undermine the community's confidence in the integrity of our tax system and distort any debate.

The Business Council also supports the Board of Taxation's ('the Board') proposal that the TTC should be reviewed three years from its commencement. In addition, the minimum standards of the TTC should be maintained and changes should only be considered after the impact of the current standards can be properly assessed. A compelling case should underpin any calls for further transparency, weighing benefits against costs, including compliance costs, and implications for commercial confidentiality. Additional feedback on specific areas of comment in the consultation paper are provided below.

### **Principles for tax transparency**

The Business Council supports tax transparency that is fit for purpose. Company reporting must balance the need to better inform stakeholders with the need to retain commercial confidentiality in some instances, and minimise compliance costs as much as possible. Where company supply chains or operations are disaggregated across the globe, accounts will be commercially sensitive in parts and inherently complex. The OECD has recognised this as part of Action Item 13 of the Base Erosion and Profit Shifting (BEPS)

project, designed to give tax administrators a more detailed understanding of global supply chains.

The proposed TTC balances the views of a number of stakeholders and lands on a well-balanced position. The proposed disclosures should be guided by a set of principles, including:

- The information provided should be meaningful and better inform the public. This information can be both qualitative and quantitative in nature.
- Compliance costs should be minimised.
  - The Board should be mindful of compliance costs. In particular, the 2015–16 financial reporting start date will require system changes on a limited time frame, which will increase the compliance burden.
- There should be scope for flexibility in how firms choose to adopt the TTC, such as in how the information is presented.
  - A ‘one size fits all’ approach will be difficult given the variety of circumstances of companies.
- There should be consistency between the TTC and other domestic and international transparency and reporting measures. There should be clear equivalence provisions between jurisdictions to minimise the reporting burden and costs for companies operating in multiple jurisdictions.
  - Wherever possible, the starting position for disclosure should be consistent with information already lodged with revenue authorities – both ATO or internationally.

### **The broader tax framework**

A competitive corporate tax system is an important element of maintaining a strong economy and lifting living standards. The corporate tax system should encourage investment, risk-taking, innovation and entrepreneurship. At the same time, the community needs to have confidence in the integrity of the corporate tax system. The TTC can augment this framework of fostering trust in the company tax system. As part of this broader framework, the public needs to be confident that:

- Companies are complying with the law.
  - As the consultation paper notes, ‘the ATO has recently reported that, according to a suite of indicators, companies are generally paying the income tax required under Australia’s tax law and there is evidence that appetite for tax risk has declined over the past decade.’
- Tax integrity measures are robust and align with community expectations, but do not unduly deter investment, reduce our competitiveness or create unnecessarily complex tax arrangements.
  - Australia has ‘some of the strongest tax integrity rules in the world’.<sup>1</sup> Successive governments, through bipartisan support, have sought to maintain this integrity by updating measures such as transfer pricing rules, the foreign source income anti-tax-deferral regime, general anti-avoidance rule and thin capitalisation rules. These measures complement each other and provide Australia with a robust and holistic set of integrity measures.

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<sup>1</sup> S Morrison (Treasurer), 2015, *OECD report supports Australian Government action on multinational tax avoidance*, media release, 6 October, Department of the Treasury, Canberra, <http://sjm.ministers.treasury.gov.au/media-release/003-2015/>.

- The government’s recent passage through the parliament of its multinational tax bill adds to Australia’s already robust corporate tax system, and sees Australia play its part in responding to the OECD’s BEPS package.
- The ATO is effectively administering the laws.
  - The Board of Taxation has acknowledged that the ATO will not be a user of the TTC, given its already powerful information-collecting abilities. Information that is foreseeably relevant to the determination, assessment and collection of taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters is provided to the ATO by other countries through our double tax treaties and 36 Tax Information Exchange Agreements, including a number with countries some consider to be ‘secrecy jurisdictions’. The OECD’s BEPS package will also boost international cooperation between tax administrations.<sup>2</sup>

## Specific areas of comment

### How should the TTC be disclosed?

The Business Council supports giving all companies the discretion to determine whether the disclosure is made in financial statements or via a ‘taxes paid’ report. It is unclear why optionality should be provided only to companies who do not prepare general purpose financial statements. The Board’s final report should provide clarity around this issue.

The benefits of requiring a company to amend its financial statements to comply with Part A of the TTC, and prepare a separate *taxes paid* report to comply with Part B, are unclear. For example, where a company prepares a *taxes paid* report, it should have the optionality to include all the information required under the TTC (both Part A and B) in this report. This approach would benefit users of the information by publishing it in one document, minimise compliance costs for companies and, as the Board notes, the *taxes paid* report may be more accessible to general users.

Furthermore, while the consultation paper notes that the information to be published in the *taxes paid* report should not be subjected to an audit, any data published in Part A will need to be audited. Within the *taxes paid* report, there is a powerful incentive for companies to accurately disclose, resulting from ATO and broader public scrutiny. For large companies, the *taxes paid* report may receive increased governance as it could be reviewed by the company’s board or audit committee, for example. This is demonstrated in existing company tax disclosures.

There should also be flexibility for the TTC to be incorporated into global disclosure reports for companies who publish them. Requiring a separate Australian report may not deliver additional benefits and may encourage other countries to do the same, at the risk of significant compliance costs.

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<sup>2</sup> OECD, 2016, *A boost to transparency in international tax matters: 31 countries sign tax co-operation agreement to enable automatic sharing of country by country information*, media release, 27 January, Paris, <http://www.oecd.org/ctp/exchange-of-tax-information/a-boost-to-transparency-in-international-tax-matters-31-countries-sign-tax-co-operation-agreement.htm>.

## Effective tax rates

The Business Council supports the Board's recommendation not to publish effective tax rates calculated using the ATO's effective tax borne method. The formula is complex, costly to comply with, largely untested and does not provide comparability or consistency with effective tax rate measures used overseas.

## Taxes paid report

The Business Council supports the approach of the *taxes paid* report using both quantitative and qualitative information.

The final TTC should clarify the level of minimum detail to be provided in relation to the qualitative information in the *taxes paid* report, for example, tax risk management, governance etc. This guidance should facilitate meaningful disclosure of qualitative information without being overly prescriptive.

The Business Council also supports the consultation paper's view that disputes with revenue authorities should not be disclosed as part of the TTC. As the Board has observed, disputes will be subject to accounting or ASX disclosures if material.

## International related party dealings

The Business Council supports the qualitative disclosure of international related party dealings as proposed by the consultation paper. This measure goes far in better informing the public by disclosing the qualitative nature of key categories, including the nature of routine commercial dealings that are material and the country involved.

Given that some companies may have extensive international related party dealings, materiality will be important. We would also suggest the Board consider extending this materiality by limiting this disclosure to the top three international dealings in the top three countries. This would be consistent with the International Dealings Schedule which is lodged with the ATO in conjunction with the income tax return.

The Business Council does not support the publication of quantitative international related party dealings data. It is important to recognise that with the implementation of the OECD's recommendations on country-by-country reporting, revenue authorities have been provided with an additional risk management tool to assist in administering the law.

The release of quantitative data may also have serious commercial confidentiality implications. For example, the data may allow companies to work out their competitors' margins, at serious commercial detriment. In addition, quantitative data will not reveal the other side of every transaction. For example, there may be a loss on the other side of the transaction, or no margin at all. In this case, a qualitative approach would be much more meaningful.

## Other considerations

The Business Council endorses the TTC's support for materiality concepts in preparing disclosures. This recognises what is appropriate for the size of each business, and will also balance compliance costs against material benefit.

As discussed previously, the proposed 2015–16 financial reporting start date will require system changes on a limited time frame, which will increase the initial costs of adopting the TTC. The final TTC will not be prepared until May, by which time the financial year will be almost over, preventing prospective changes to administrative processes for the initial reporting period. The presentation of information in financial statements may require a lead time for the compilation of data and auditing. Indeed, for early balancing companies, it will be practically impossible to meet the disclosure requirements as financial results will have been released prior to the finalisation of the TTC.

The final report should also provide clarity around how the Board sees the TTC aligning with international reporting requirements. While the Board has acknowledged this as an issue, it is unclear precisely how the TTC aligns with international reporting.

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