CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

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Dear Sir

Tax Transparency Code – Consultation paper

Chartered Accountants Australia and New Zealand (Chartered Accountants ANZ) welcomes the opportunity to make a submission on the Board of Taxation's' (**Board of Tax**) consultation paper on the development of a tax transparency code for large businesses (**the Code**).

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Background to this submission

The Government has indicated that it would like large business to be more publicly transparent about their tax affairs. In the 2015 Federal Budget it was announced the Board of Tax would lead the development of a voluntary tax transparency code.

The Board of Tax consulted with various stakeholders in August 2015 on a proposed Code. In December 2015 the Board of Tax released a consultation paper outlining its preliminary recommendations and to facilitate additional consultation. As outlined in the consultation paper, the Board of Tax's Code proposes the following:

- *Who should disclose?*
  Businesses with Australian turnover of A$100M or more that have a taxable presence in Australia and are taxed like companies.

- *What should be disclosed?*
  Disclosures are divided into two parts, namely:-

  - Part A. All the above mentioned businesses would disclose:
    1. a reconciliation of accounting profit to income tax expense and then to income tax payable
    2. material non-temporary and temporary differences in the above reconciliation
    3. a global effective tax rate (ETR) and an Australian ETR,

  - Part B. The above mentioned businesses with Australian turnover of A$500M or more would also prepare a taxes paid report disclosing information on:
    1. tax policy, strategy and governance
    2. a corporate taxes contribution summary
    3. a qualitative explanation of material international related party dealings.

- *When should it commence?*
  The Code would apply for the 2015-16 reporting season and be subject to a post implementation review by the Government after 3 years.

- *What are the perceived benefits?*
  Implementing the Code would reflect the international trend of increased tax transparency. It should encourage businesses to adopt low risk tax strategies and reinforce a voluntary compliance culture. It should differentiate the reputation of the majority of businesses that are paying their fair share. Over time, it should improve community confidence in the business tax system, the environment for tax reform and enable more informed debate about tax policy.

Chartered Accountants ANZ also understands the Board of Tax has recently indicated the following about its vision of the proposed Code:

- The intention is to avoid any prescriptive format or template for the tax disclosures. The concept is that a business discloses the relevant information in the way it wants to, having regard to its natural business systems and without the need to mandate hard and fast rules. Thus compliance costs can be kept to a minimum.

- The Code allows a business to tell its own tax story. However, the Code does not have as a key objective, the ability to do comparability analysis as between taxpayers.

- Thus impacted businesses have considerable flexibility in the following matters:-

    - *How is the information presented?*
      It could be all included in the financial accounts or all included in a separate tax report or a mixture thereof.

    - *Who discloses the information?*
      There could be a single group report, an entity by entity report or a combination thereof.

    - *When is the information presented?*
      The tax reporting could accompany the publication of year-end financial statements or could be published after tax returns have been lodged.

    - *What information is disclosed?*
      The tax reconciliation and ETR disclosures could start with profit numbers disclosed in stand-alone accounts or accounting consolidated accounts. The numerical information presented could ultimately reconcile to estimated income tax payable as per the financial statements, or, actual income tax payable as per the income tax return. There is no requirement to reconcile the information presented to any ATO tax transparency public website disclosures, but some businesses may choose to do so.

      There is, however, an expectation that a business would explain how the numbers have been collated. There is also a desire for all businesses to use company income tax expense in their ETR calculations (as opposed to a total income tax expense number which might include other taxes). In this regard, it is expected the Australian Accounting Standards Board (AASB) would provide guidance on, inter alia, this matter. However, any AASB guidance is not intended to be a pre-requisite before a business can adopt the Code. Where necessary, a succeeding year's disclosures can be modified if AASB guidance is subsequently released.

In short, the Board of Tax's vision for the Code is deliberately designed to be 'discloser friendly' when it comes to practical compliance.

In this context, Chartered Accountants ANZ's observations and recommendations are provided below.

Overall comments

Chartered Accountants ANZ is broadly supportive of the scope, the disclosure content and the Board of Tax's vision for the practical operation of the Code.

We have made a number of recommendations below covering who should disclose, what should be disclosed as well as various other matters.

These recommendations are not suggesting fundamental changes to the Code. Rather, they are focussed on revisiting the Code's interactions with other tax amendments late in 2015 as well as potential improvements to the guidance provided to impacted businesses, end users and regulators in respect of the practical application of the Code.

Who should disclose?

On the issue of which businesses should be subject to increased tax transparency, Chartered Accountants ANZ concurs with the following principles outlined in the consultation paper:

- The Code should be targeted towards larger businesses that are taxed like companies. It should be voluntary and be subject to a post implementation review after 3 years.

- It should cover both Australian and foreign head quartered businesses with a taxable presence in Australia. Given it is voluntary, this would include any privately owned businesses and any businesses that otherwise might have financial statement lodgment exemptions or relief under the corporations law. We also agree that the Code should not attempt to bring within its scope foreign multinationals that have sales to Australian customers but do not have a taxable Australian presence.

- It should have two-tiered differential reporting requirements (i.e. Part A and Part B disclosures in the Code).

However, given the legislative amendments late in 2015 to the ATO public website disclosure rules and the significant global entity (SGE) rules, some reconsideration by the Board of Tax of who should disclose under the Code (and the turnover thresholds) appears prudent.

In this regard, Chartered Accountants ANZ recommends the following:-

- For Australian owned private companies, adopting a higher A$200M turnover threshold for the Code appears to be justified on the basis of streamlining the different tax transparency reporting rules.

- Simplification might also point towards all corporate SGEs with a taxable presence in Australia being within scope for the Part A disclosure rules of the Code (even though we acknowledge this might expand the number of foreign owned businesses potentially within the scope of the Code in the absence of any small company carve out).

- By leveraging off the SGE's global annual income calculations, the Australian turnover component in those calculations could then form the basis for any threshold for the Part B disclosure rules. In this regard, we support a Part B disclosure threshold at Australian turnover of A$500M.

- As an aside, we note that the SGE rules governing the preparation of general purpose financial statements will be the subject of ATO consultation in the first quarter of 2016. We suspect that in the legislative haste to enact these rules in 2015, the existing SGE legislative framework may ultimately require some fine tuning. If so, we would encourage the Board of Tax to actively engage with Treasury to identify whether other solutions might now be available with the publication of the consultation paper on the proposed Code. For example, if a corporate SGE voluntarily embraced both the Part A and Part B disclosures under the Code, would this ameliorate the need for the corporate to bear the cost of preparing a full set of general purpose financial statements?

- Whilst it is a minor point, the Board of Tax might also want to acknowledge that if certain 'not for profit' businesses are outside the ATO's public website disclosure rules, or, certain businesses ultimately obtain exemptions from preparing general purpose financial statements or from preparing Country by Country reporting (e.g. by reason of their size), similar exemptions could also be considered for the Code.

- Another minor point relates to the use of the wording ‘large’ and ‘medium’ businesses to distinguish the disclosure rules for Part A and Part B of the Code. Given these words already have multiple meanings throughout the tax system, we should suggest that alternate descriptors be used.

The Board of Tax should revisit the criteria for determining those businesses that are within the scope of the Code in light of the legislative amendments at the end of 2015.

As an aside, the development of the Code and its possible adoption by corporate SGEs should be considered in the upcoming consultation on the preparation of general purpose financial statements by corporate SGEs.

What should be disclosed?

As summarised in the background section, six tax transparency disclosures are proposed under Part A and Part B of the Code.

Compliance cost considerations have featured heavily in the Board of Tax’s deliberations on how those six disclosures can be satisfied. Thus, whilst the parameters of the disclosures under Part A and Part B of the Code has been enunciated, businesses have significant flexibility in calculating and presenting those disclosures.

Chartered Accountants ANZ concurs that having regard to the competing interests between commercial confidentiality and public interest, as well as current global tax transparency developments:

- The six tax transparency disclosures in the Code are adequate and sufficient.
- For all relevant businesses, the three disclosures in Part A are appropriate, as are the additional three disclosures in Part B for the larger businesses.
- The flexibility as to how those disclosures are made is also broadly supported.

In particular, Chartered Accountants ANZ is generally supportive of a ‘discloser friendly’ Code. The infancy of tax transparency reporting globally, the fact the Code will be revisited after three years and the existence of other tax transparency related developments in Australia, suggests to us the Code can err on the side of the disclosers. The variety of organisational structures and bespoke information systems in larger businesses also supports this approach.

Moreover, much of the Part B disclosures in the taxes paid report are qualitative in nature. It is therefore difficult to envisage that a single disclosure template or single set of preparation rules is warranted in this case.

However, we note the Part A disclosures are intended for all impacted businesses, are more quantitative in nature and the consultation paper envisages the disclosures might be included in a set of financial statements that are subject to the application of separate corporations law requirements. Therefore, it raises the issue of whether greater generic guidance is warranted.

In this regard, we understand the Board of Tax does not consider one of the Code’s key objectives is to facilitate comparability analysis (albeit we suspect some end users might dispute this conclusion). In any event, on the presumption any disclosures by a business explain how

the numbers have been compiled, the Board of Tax considers the development of additional guidance to be generally unnecessary.

In this regard, Chartered Accountants ANZ recommends the following:-

- The Board of Tax has already recognised that for the purposes of ETR disclosures it is important that the numerator in that calculation be based on company income tax expense only "to enable the users of the disclosure to make comparisons both to the company tax rate and to other companies." Thus it appears comparability has some relevance for the Code, even if it's not a key objective.

- We believe there is greater end user benefit (as well as greater clarity for the impacted businesses) if guidance was provided on *both* the numerator and denominator for any ETR disclosures.

- By way of examples, Australian pre-tax profit numbers could be different if accounting consolidated numbers are used as against stand-alone accounts. Australian pre- tax profit in consolidated accounts might also be impacted by the treatment of costs attributable to Australia but not booked in Australia, or, the treatment of various intra-group income and expenses that might be eliminated on consolidation but not in stand-alone accounts. Media commentary last year also highlighted the apparent disagreement between the ATO and some foreign multinationals where certain taxes (e.g. Australian withholding taxes paid on behalf of offshore related parties) were effectively being treated as part of an Australian income tax expense and an income tax contribution by the Australian operations. Thus, additional guidance could in fact assist businesses by highlighting some of the preparation issues they may encounter, without necessarily being overly prescriptive.

- We also note that the existing income tax accounting standard currently provides basic examples of how the tax reconciliation from accounting profit to income tax expense could be disclosed. We query why such guidance cannot form the basis of example disclosures for the tax transparency reconciliation from accounting profit to income tax payable. Again, this additional guidance could in fact assist some businesses by lowering the transitional compliance costs through the provision of an example Part A tax reconciliation template.

- In addition, we note that where the Part A disclosures are in fact embedded in a set of financial statements, the AASB and the Australian Investments and Securities Commission (ASIC) may well need to provide guidance on the Code's disclosures and the overriding requirements of the corporations law and accounting standards.

- Thus, whilst we are generally supportive of the Code's flexibility, at a minimum, we consider the provision of additional guidance on the Part A disclosures is worth reconsidering by the Board of Tax. In making this recommendation we acknowledge the Board of Tax may conclude (or may have already concluded) that optionality is acceptable on a number of matters (e.g. businesses can use either consolidated or stand-alone accounting numbers). If so, any additional guidance should make this more explicit.

- If ultimately the Board of Tax is not inclined to recommend any additional guidance in respect of the Part A disclosures then we recommend the final Code should at least:

    - Be more explicit on the flexibility afforded impacted businesses as to how, who and what information is presented, including any accepted optionality.
    - Recognise that any decision to embed the Code's disclosures in a set of financial statements must have regard to the overriding requirements of the corporations law.

  - Emphasise the importance of impacted businesses clearly explaining to end users the assumptions underpinning any tax numbers.

- In respect of the Part B disclosures, we have noted above the qualitative nature of the disclosures do not appear to warrant a standard reporting template or set of preparation rules. Nevertheless, to the extent that the final Code can highlight to businesses any relevant local or global precedents that would be beneficial to impacted businesses. In this regard, we observe the consultation paper already has useful references to a number of local taxes paid reports as well as the ATO's tax risk management and governance review guide.

- By way of a further example, we note in December 2015 a draft Finance Bill was released in the United Kingdom and it is proposing certain tax transparency reporting not too dissimilar to the first disclosure requirement in Part B of the Code. The final Code could comment on the extent to which impacted businesses can leverage off the UK guidance (or indeed any other global guidance the Board of Tax considers is relevant).

The Board of Tax should revisit whether additional generic guidance is warranted, at least with respect to the Part A disclosures.

The final guidance on the Code should be more explicit on the Code's flexibility and highlight the importance for clear explanations underpinning the assumptions.

The final guidance could also highlight any global material relevant to the Part B disclosures.

When should it commence?

It is proposed the Code would apply for the 2015-16 full year end reporting season.

In this regard, the Board of Tax is still consulting on the final Code. Moreover, we note the Government may not announce its final decision on the Board of Tax's recommendations until the 2016-17 Budget. Thus the Code will not be in operation until May 2016 at the earliest.

Chartered Accountants ANZ recommends that impacted businesses with 2016 early balancing year ends (i.e. full year reporting ending on 31 May 2016 or earlier) should not be within the scope to the Code until the 2016-17 reporting season.

The Board of Tax should acknowledge that the Code's commencement date can be delayed for early balancing businesses in 2016.

Other comments

Chartered Accountants ANZ makes a number of other comments on the Code and the consultation paper:

- We concur that disclosures under the Code should not be subject to any mandatory external assurance certification or penalty regime.

- Nevertheless, in recent times the ATO has demonstrated a willingness to 'correct the public record' where taxpayers have made statements about their tax affairs that the ATO considers are misleading or incomplete. If the ATO was mindful to continue this approach in respect of disclosures made under the Code, we would encourage the Board of Tax to recommend the ATO first approach the relevant taxpayer so there is the opportunity to self-correct.

- We infer from the consultation paper that much of the Part B disclosures are focused towards taxes paid and tax governance referable to the Australian tax system as opposed to foreign taxes. We recommend the final Code explicitly confirms this point.

- We concur that the ATO may not be a prime user of the Code's disclosures, but the information disclosed might nonetheless be leveraged by the ATO.

  For example, we consider such disclosures would be useful in any initial discussions between the ATO and the taxpayer in large business tax risk assessment compliance programs. In addition, under the Country by Country reporting rules, it is likely the ATO will need to develop guidance on, inter alia, how Australian accounting profits and Australian income taxes are to be calculated and presented. The way impacted businesses approach these issues under the Code could be useful in streamlining compliance costs under both tax transparency reporting regimes.

  We recommend the Board of Tax encourages the ATO to find ways to actively leverage off the Code's processes and disclosures.

- The consultation paper briefly alludes to a government agency (e.g. the ATO) being responsible for the administration of the Code. This includes developing a central website that publishes links to all publicly issued reports. The consultation paper also recommends that the AASB and business organisations develop additional guidance material and presumably ASIC would also have an interest in providing guidance on the Code's disclosures where they are embedded in a set of financial statements. In addition, there is the separate tax transparency reporting regime involving ATO public website disclosures which includes guidance material on the business tax system and warnings about the limitations of any comparability analysis.

  We are supportive of the ATO having an administrative role in respect of the Code as, inter alia, it would assist in fine tuning disclosure guidance in respect of the Code after each year's reporting. We recommend, however, the ATO takes a holistic approach to any central website so that it is a one stop shop for end users, impacted businesses, regulators and business organizations.

- We concur the Code should be the subject of a post implementation review after 3 years. We would, however, recommend the Board of Tax considers what might be the hallmarks of successful implementation of the voluntary code and flag in advance some potential "success" benchmarks for the Code.

The Board of Tax should encourage the ATO:

- To approach taxpayers in the first instance if the ATO has any concerns with disclosures under the Code.

- Leverage off the Code in its large business compliance risk processes and in consultation on Country by Country reporting.
- To take a holistic approach to its administrative role in respect of the Code.

In the final Code the Board of Tax could explicitly highlight:

- The Part B disclosures are mainly focussed on a taxes paid report covering Australian, not global, tax systems
- The hallmarks of a successful voluntary Code to assist in the post implementation review.

I am happy to discuss any aspect of our submission with you should further information be required.

However I will be on annual leave and travelling overseas from 1 February to 26 February 2016 (inclusive). In my absence please do not hesitate to contact Matt Hayes on (02) 9290 5750 or at matt.hayes@charteredaccountantsanz.com

Yours faithfully,

Michael Croker
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