

Tax Transparency Code  
The Board of Taxation  
c/- The Treasury  
Langton Crescent  
CANBERRA ACT 2600

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**By email: [taxtransparency@taxboard.gov.au](mailto:taxtransparency@taxboard.gov.au)**

## **Submission on the Board of Taxation Consultation Paper on a Tax Transparency Code**

Dear Board Members

Ernst & Young (**EY**) welcomes the opportunity to provide our comments on the Board of Taxation (**Board**) consultation paper dated 11 December 2015 on a voluntary tax transparency code, to implement a proposal announced by the Federal government in the 2015 Budget.

Overall, we support the Board's intention to minimize compliance costs, maintain commercial confidentiality and adopt an approach which is consistent with other existing and emerging local and global reporting requirements. To summarize, we:

- Recommend that the media be included as a group with responsibility for raising the level of public understanding of business taxation.
- Recommend that the tax transparency requirements be updated to account for the requirements for general purpose accounts to be published under the *Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015*.
- For consistency, recommend that the voluntary tax transparency code apply to all public entities to which the Australian compulsory tax transparency measures apply.
- Query whether it should be prescribed in the voluntary tax transparency code that information about international dealings and global effective tax rate be included.
- Recommend prescribing a time for publication of links by a responsible agency.

We set out our detailed submissions in **Appendix A**.

We would be happy to discuss any of our submission points further and provide any additional assistance if required.

If you have any questions please contact the writer on 03 9288 8917.

Yours faithfully



Sue Williamson  
Partner – Ernst & Young

## APPENDIX A

### **Submission on the Board of Taxation Consultation Paper on a Tax Transparency Code (Consultation Paper)**

#### **Section 4 Consultation Paper: Balancing competing interests and education**

We agree that the focus on the relationship between corporations and the public is appropriate for a voluntary code for tax transparency. We further agree that the code ought to be designed having regard to the need to balance public interest in increased transparency and the needs of business, and that it ought where possible to be consistent with other reporting requirements which relate to tax transparency. We make further specific observations on how we believe these objectives can be best achieved below.

The Board has made various comments around the responsibility industry groups and corporates have to raise the level of understanding of business taxation. We broadly agree with these observations on the understanding that they are made to provide context in the Consultation Paper and that the Board has not been tasked with considering these issues in depth. In particular, we consider it is important to raise awareness around why a company's tax payable might be less than 30% of its gross revenue. Indeed the experience of appearances before the Senate Inquiry into corporate tax avoidance in its 2015 hearings illustrated some of the issues involved here, in particular we noted that the Commissioner of Taxation explained various times to the senators that the appropriate Australian tax collections are not simply 30% of the gross revenues of foreign and Australian companies.

However, it is submitted that the discussion is incomplete as it does not deal with two issues. First, how the public is made aware of the information in a "neutral" fashion. Second, but related to the first, the role of the media in this respect.

To the extent comment is to be made on responsibility for raising the level of understanding of business taxation in the final report we consider it is appropriate to also comment on the role the media ought to have. Media can significantly influence public opinion, and therefore must be careful to ensure that their reporting is fair and accurate and does not give distorting emphasis. These are reporting standards most members of the media subscribe to through the codes of conduct of their various industry bodies. It is our view that in the context of a voluntary tax transparency code being developed with purposes which include facilitating media awareness and knowledge of corporate taxation, it is appropriate to also reflect on what use media should make of that information and how they can contribute to public understanding of business taxation.

One possibility, if it were considered that the Board, Treasury or Taxation Office was somehow too close to the government, a recommendation that large media outlets be requested to publish an explanation document written by a specified party. For example, a university professor's brief summary of why tax rates will often be less than the headline rate with a guidance to the public on what to look for to assess the tax behaviour of corporates.

### **Section 5 Consultation Paper: Users**

As above, being voluntary in nature, we agree that a tax transparency code should be designed with the general public, shareholders, analysts and investors in mind rather than the revenue authorities. We also agree that these users would be best served by simplified disclosures.

### **Sections 6 and 7 Consultation Paper: Scope**

We query whether the distinction between reporting requirements for large and medium businesses as identified in the Consultation Paper are as applicable given the changes made by the *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015* requiring the publication of general purpose financial statements. We do support the underlying rationale that reporting requirements should not be made too onerous. Given the changes made by the *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015* we recommend that if a mode of disclosure is to be prescribed it should be the same for all entities publishing general purpose financial accounts.

For consistency with Australian compulsory tax transparency measures, we recommend that the voluntary tax transparency code apply to the same class of public entities to which the tax transparency measures apply, rather than being limited to company structures. Whilst partnerships and trusts are generally subject to different reporting requirements to companies, to the extent they are required to account for their income as though they were a corporate entity the general public does have an interest in these entities and an interest in understanding their tax position. For example, most members of the public will have some investment in a superannuation fund, which would be within the class the Consultation Paper suggests should be excluded from reporting requirements.

### **Section 8 Consultation Paper: Method of disclosure**

We agree with the proposal that tax transparency disclosure be delivered by improvements to tax disclosure in financial statements and/or preparation of taxes paid reports without prescribed templates. To maximize flexibility for entities complying with the tax transparency code we recommend that the form of the disclosure be at the discretion of the entity reporting to choose whether to include the disclosure in financial accounts or in a taxes paid report.

### **Section 9 Consultation Paper: Content of disclosure**

As stated above, given the changes made by the *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015* we recommend that if a mode of disclosure is to be prescribed it should be the same for all entities publishing general purpose financial accounts, but that our recommendation is that the form of disclosure (ie. whether it is a tax risk report or included in financial accounts) be left to the discretion of the reporting entity.

We agree that the disclosure should include a reconciliation of accounting profit to income tax expense and from income tax expense to income tax paid or income tax payable and that a standardized method for calculating effective tax rate should be adopted. We query the appropriateness of requiring a global effective tax rate to be published. Our concern is that the general public may not have adequate understanding of different corporate tax rates globally, and that disclosures of this information may be misinterpreted by the public as indicative of tax evasion practices where there are none.

We also query whether it is appropriate for the tax transparency code to require that information about international dealings be included in disclosures. The compulsory tax transparency measures relate to disclosure of Australian tax paid; international dealings will not be relevant to that disclosure in all instances. Further, information about international dealings without also including information about taxes paid in other jurisdictions is likely to be misleading, particularly to general members of the public without in depth tax knowledge. Information about taxes paid in other jurisdictions could be included, but this substantially increases the burden on the company reporting due to, for example: differences in timing of tax payments in different jurisdictions and the need to obtain information from overseas related entities. Therefore, whether to include this detail is a judgment we consider is best left to reporting companies.

We also query whether it is appropriate to require corporate entities to disclose their historic risk rating based on the ATO risk differentiation framework. ATO risk rating is based on ATO perception and may not in all instances accord with the corporations own perception of corporate tax risk. Further, where unfavorable ATO risk ratings have been notified to corporations many have taken active measures to reduce their ATO risk differentiation framework risk rating, and as such, disclosure of historic ratings may not be indicative of current tax risk approach.

#### **Section 10 Consultation Paper: Other considerations**

As above, we recommend that the time for notifying the responsible agency of the publication of a tax report under the voluntary tax transparency code and for the responsible agency to publish links should be prescribed to reduce the overall administrative burden on that agency.