



The Board of Taxation  
c/The Treasury  
Langton Crescent  
CANBERRA ACT 2600

Email: [taxtransparency@taxboard.gov.au](mailto:taxtransparency@taxboard.gov.au)

Attention: Mr Michael Andrew

29 January 2016

Dear Michael

Thank you for the opportunity to provide feedback in relation to the Board of Taxation's Tax Transparency Code (TTC) released in December 2015.

Overall, we commend the work of the Board to date in outlining a well-considered approach to tax transparency for companies. The proposed code recognizes the legitimate expectation of the community for more relevant information on the way in which companies meet their taxation obligations in Australia but balances the increased compliance burden on business

### **The role of tax transparency**

Strong taxation systems require strong institutional systems and are built on community confidence that the aims of the system are being met. A good taxation system is often judged by the way it balances the sometimes competing challenges of equity, simplicity and competitiveness.

It is critical that the community has confidence that tax laws are appropriately designed and effectively enforced. It is equally important that taxpayers have the confidence that they are being assessed fairly and have the ability to determine whether they are being treated equitably relative to others in the community.

For the aims of the system to be met it is important that individuals and companies have sufficient information on the how the system works to be able to contribute effectively to the debate. Taxation is complex and it is important in fuelling this debate that a level of transparency over the inner workings of the tax system is available to stakeholders in the system.

An important feature of the Australian system (and most internationally equivalent systems) is that taxpayer specific information provided to the ATO is confidential and not made public. Maintaining confidentiality over taxation affairs encourages voluntary compliance and self-assessment and is a fundamental principle underpinning the tax system. Any initiatives to increase taxpayer transparency needs to balance the benefits to the system that come from confidentiality being maintained with the increasing demand from stakeholders for greater public transparency to allow understanding, confidence and debate in the community over the tax laws.

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**PricewaterhouseCoopers, ABN 52 780 433 757**  
Darling Park Tower 2, 201 Sussex Street, GPO BOX 2650, SYDNEY NSW 1171  
T: +61 2 8266 0000, F: +61 2 8266 9999, [www.pwc.com.au](http://www.pwc.com.au)

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For the general community it means having confidence that the system is operating effectively and equitably. Due to the complexities of the tax system, this confidence often requires an element of trust in the public institutions that have primary responsibility for the taxation system being the Parliament that is responsible for law design and the ATO that has responsibility for its administration. It also requires a level of transparency over the workings of the system in order to assess the performance of those institutions and to adequately engage in the debate about the appropriateness of the system.

### **Specific comments and observations on the TTC proposal**

#### **Importance of education about the tax system**

An important recognition is that the tax system is complex and it is unrealistic to expect that the users would be in a position to have access to sufficient information and expertise to determine whether individual companies are meeting their tax obligations. This is clearly the domain of the Commissioner of Taxation.

However it is clear that the level of understanding of the system of taxation of companies is better understood such that the public has an ability to sufficiently understand the broader objectives and operation of the corporate tax system and the level of compliance by taxpayers therein.

We agree that the ATO has an important role in improving confidence in the tax system. As a general comment, Australia has some of the most rigorous and well enforced and anti-avoidance and transfer pricing legislation in the world. As such, it would be of benefit to the community for there to be a better understanding of the general level of compliance and to help moderate debate and build public confidence in the areas of the tax system that are working well.

#### **Users of the TTC**

The Board recognizes that the proposed users of the TTC does not include the ATO.

The needs of users (both “General” and “Interested”) could be better defined as information to enable the user to assist in explaining the position taken in terms of proposed disclosures. It is likely that the Board will receive submissions that demand a greater level of transparency than is proposed in TTC. In evaluating these submissions it may be helpful to better define the public benefit that is achieved by transparency so that the appropriateness of any additional disclosures can be considered.

The reputational integrity of companies is critical to their commercial purposes. Accordingly, in our view the information should enable users to evaluate and understand the approach of a company to meeting its obligations in the context of the taxation system.

#### **Nature of information to be disclosed and threshold**

We broadly agree with the proposed two tier levels of minimum disclosures. In relation to the disclosures we note that while there will be an increased compliance burden it does not appear disproportionate to the objectives of the TTC.



### *Part A*

The minimum threshold for Part A disclosures has been set at \$100m which we note aligns with the minimum threshold for the corporate tax transparency report released for the first time by the Commissioner of Taxation for public companies and foreign owned private companies in December 2015. We note, however, that for Australian privately owned companies, the minimum threshold is \$200m following legislative amendments in December 2015. Accordingly, it may be more appropriate to align the minimum threshold for Part A disclosures by Australian owned private companies with \$200m threshold for the public corporate tax transparency report for consistency.

Part A proposes to expand the tax disclosures required in general purpose financial statements. However, we note that a reconciliation from accounting profit to tax expense is already required under accounting standard AASB 112 *Income Taxes*. This reconciliation can be performed in absolute terms or for the average effective tax rate. The standard prescribes how income tax is calculated for accounting purposes and also provides a definition of the average effective tax rate (paragraph 86). We believe that the accounting standard provides adequate guidance and should not need to be amended.

If an entity does not comply with disclosure requirements of AASB 112 in their financial report, it should be encouraged to do so (as opposed to including the information in a separate taxes paid report). The code should not refer to entities that are not preparing general purpose reports, but rather to entities that are not providing the relevant information in their notes to their financial statements.

### *Part B*

We note that in relation to the Part B we recommend caution in requiring companies to disclose the ATO assigned risk rating (under the Risk Differentiation Framework). We note that this rating is assigned by the ATO for its own risk assessment purposes and to determine its allocation of resources. It is based on a range of considerations made by the ATO and it is based on a range of factors some of which are not generally within the control of the taxpayer. Many taxpayers may not agree with the rating assigned by the ATO and there is limited ability to dispute or challenge the rating itself. Making these ratings public would put greater emphasis on companies to explain why their rating is high, and conversely would put pressure on the ATO to justify low ratings. At a minimum, if such a disclosure were to be part of the minimum standards of the TTC, there should information provided by the ATO to better explain the Risk Differentiation Framework in the context of the TTC.

Similarly we note that there may be some sensitivity in disclosing the existence of Advance Pricing Arrangements (APA). As a large number of APA's are concluded at a net profit level, the existence or otherwise of an APA may be used to benchmark across industries 'acceptable' profit levels. Such consequences could be misleading given there would be many aspects of the APA that are not likely to be relevant to other taxpayers even in the same industry. The disclosure of the existence of an APA may therefore give rise to a need to justify profit levels across industry segments and on the part of taxpayers. For the ATO there may be a reluctance to agree APAs in certain otherwise appropriate circumstances due to the fact that public scrutiny may give a misleading view of the ATO's attitude to transfer pricing issues relevant to other industry participants or taxpayers.



**Form of disclosure**

We endorse the proposed approach that the form of disclosure be flexible such that companies can choose whether to include in accounts or in a separate disclosure or report.

It might be useful for the Board to consider as an Appendix to its report a sample example of a disclosure that could form a template for companies to consider and tailor to their circumstances.

**Assurance and penalties**

We agree with the recommendation that there be no separate assurance requirements for the TTC. Similarly we agree there be no penalty regime. This is appropriate given the nature of the code and the fact that it is seeking to drive an increased level of voluntary disclosure.

**Exclusions**

We note that the Board has carefully considered and advised against the TTC requiring disclosure of

- The quantum of international related party dealings;
- Country by Country reports; and
- ETRs using the ATOs proposed Effective Tax Borne formula.

We agree with these recommendations and the Board’s reasoning.

We would be happy to discuss our submission further should it be of benefit to the Board.

Yours sincerely

A handwritten signature in black ink, appearing to read 'NH', followed by a horizontal line extending to the right.

Nick Houseman  
Partner - PwC