

# **A tax transparency code**

Consultation paper

Board of Taxation

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Manager  
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# 1 INTRODUCTION

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The Government and the Australian community would like large businesses to be more publicly transparent about their tax affairs. To this end, as part of its 2015 Budget, the Government announced that the Board of Taxation (Board) would lead the development of a voluntary tax transparency code (TTC).

The Government's commitment to implementing a TTC reflects an international trend of countries mandating or encouraging increased transparency of tax information.

Increased transparency of tax information will enable a more informed debate about tax policy. It will also enhance and differentiate the reputation of the majority of businesses that are paying their 'fair share' of tax, and encourage all businesses to adopt a low-risk approach to their tax affairs.

Over time, these developments should improve community confidence in the tax system, reinforce Australia's culture of voluntary compliance and self-assessment and improve the environment for reform to the tax system.

Following consultation with industry, tax practitioners and representatives of community groups, the Board has concluded that there is a high level of community interest in ensuring that tax transparency continues to develop as an integral part of Australian business culture. The Board has developed this Code proposal with this community interest in mind.

This paper includes the Board's preliminary findings and recommendations to Government. It is intended to facilitate additional consultation.

## 1.1 WORKING GROUP

The Board appointed a Working Group to oversee the review. Members of the Board on the Working Group are Michael Andrew (Chair of the Working Group), John Emerson AM, Ann-Maree Wolff and Neville Mitchell. The Working Group also includes Fiona Martin of the University of New South Wales, Victor Timos of Incitec Pivot, David Watkins of Deloitte and representatives of the Treasury and the Australian Taxation Office (ATO). The Working Group is assisted by members of the Board's Secretariat.

## 1.2 CONSULTATION

The Working Group has conducted a first round of consultation on the development of the tax transparency code. This included:

- 17 public consultation meetings held in Sydney, Melbourne, Brisbane and Perth attended by representatives from diverse industries, industry associations, community groups and academia; and

- meetings with the ATO, Australian Securities and Investment Commission (ASIC), Australian Accounting Standards Board (AASB), Auditing and Assurance Standards Board, the Australian Securities Exchange (ASX) and the G100.

### **1.3 RESERVATION OF VIEWS**

The ex officio members of the Board – the Secretary to the Treasury, John Fraser, the Commissioner of Taxation, Chris Jordan AO, and the First Parliamentary Counsel, Peter Quiggin PSM – have reserved their final views on the proposals in this report.

## 2 EXECUTIVE SUMMARY

The Board believes that it is in the interests of businesses, particularly large multinationals, to be more transparent about their tax affairs. The Board's proposal for a TTC is therefore a set of principles and 'minimum standards' to guide disclosure of tax information by businesses. The Board expects that the TTC will evolve over time in response to changes in the legal and commercial environment, and changes in corporate governance practices.

The TTC has been designed having regard to the information requirements of its target audience. This audience comprises 'interested users' (such as social justice groups, media, analysts and shareholders) and general users (the 'person in the street'), rather than the ATO. The ATO has access to far more detailed information about the tax affairs of businesses than is proposed under the TTC. Factors considered by the Board as relevant to most efficiently serving community interests when drafting the TTC included compliance costs, commercial confidentiality and consistency with other local and existing and emerging global reporting requirements.

The TTC disclosure should be delivered in two parts, by improvements to the disclosures of tax information in financial statements (Part A) and an annual 'taxes paid' report (Part B). A summary of the content of Part A and Part B is set out below.

TTC disclosure	Who	Minimum standard of information
<b>Part A: Improvements to disclosures of tax information in financial statements</b>	<b>'Large' and 'medium' businesses*</b>	A reconciliation of accounting profit to tax expense and to income tax paid or income tax payable
		Identification of material temporary and non-temporary differences
		Accounting effective company tax rates for Australian and global operations (pursuant to AASB guidance)
<b>Part B: 'Taxes paid' report</b>	<b>'Large' businesses</b>	Approach to tax strategy and governance
		Tax contribution summary for corporate taxes paid
		Information about international related party dealings, financing and tax concessions

\*Note 'large businesses' and 'medium businesses' should include this reconciliation in a 'taxes paid' report if they do not prepare Australian general purpose financial statements.

It is recommended that 'large businesses' should adopt Part A and Part B of the TTC. 'Large businesses' are defined as businesses with aggregated TTC Australian turnover of AUD 500 million or more.

It is recommended that 'medium businesses' should adopt Part A of the TTC. 'Medium businesses' are defined as businesses with aggregated TTC Australian turnover of at least AUD 100 million but less than AUD 500 million.

The TTC will be a minimum standard of content and it is expected that many businesses will provide additional disclosures. Businesses may also elect to satisfy the minimum standards of the Australian TTC by publishing the required information as part of other public disclosures, including as part of corporate social responsibility (CSR) reports. Other businesses may choose to disclose in a global 'taxes paid' report, an Extractive Industries Transparency Initiative report or a European Union Tax Directive report. These reports are collectively referred to as 'taxes paid' reports in this document.

The 'taxes paid' report should not need to be externally audited, because it is expected that businesses obtain significant assurance on the content through existing external and internal audit or review procedures. Additional oversight or penalties for misleading disclosure of TTC information are not recommended.

The implementation of the TTC will require coordination between several government agencies and other organisations. The Board therefore proposes to recommend that:

- The ATO or another government agency is nominated as the 'responsible agency'.
- Businesses make the TTC report publicly available (for example, by publishing it on the business's website) and provide the responsible agency with a link to the report.
- The AASB develops guidance material to assist businesses in meeting the standard required by the TTC and to establish a common definition of the term 'effective tax rate' (ETR) to ensure consistency, including addressing issues such as amended assessments, impairments and foreign currency translation.
- The business community, through its representative bodies, prepares information designed to increase community understanding of the operation of the business tax system and tax accounting disclosures in financial statements.
- The responsible agency establishes a central website that provides a link to all publicly-issued TTC reports but will not review or provide any assurance as to the completeness or accuracy of the information contained in the TTC reports.

The Board has developed the TTC having regard to the important steps that some businesses have already taken towards greater transparency of their tax affairs. The Board is aware of a number of examples of voluntary 'taxes paid' reports that have assisted it in developing the TTC. It is expected that, upon the release of the TTC, there will already be a core group of industry leaders that can demonstrate compliance with its principles with minimal additional cost. The Board believes this will assist in the development of a business culture in which greater value is attached to transparency and disclosure.

The TTC, in its current form, applies to companies and other entities that are treated as companies for Australian tax purposes. Other entities such as superannuation funds, trusts and partnerships may voluntarily adopt the TTC if they wish to do so.

## 3 OTHER DISCLOSURES OF TAX INFORMATION

### 3.1 AUSTRALIA'S EXISTING TAX TRANSPARENCY MEASURE

The ATO is now required to disclose the total income, taxable income and income tax payable of certain entities with total annual income of AUD 100 million or more.<sup>1</sup> The first reporting is expected to occur in late 2015.

### 3.2 EARLY ADOPTERS OF TAX TRANSPARENCY

Some businesses have responded to calls for greater transparency by disclosing more qualitative and quantitative information through 'taxes paid' and CSR reports. Examples include the 'taxes paid' reports issued by Rio Tinto, BHP Billiton, AMP and Cochlear.<sup>2</sup>

### 3.3 OVERSEAS EXPERIENCES IN TAX TRANSPARENCY

A number of other countries and organisations are also looking at increasing the transparency of tax information of large businesses. In its 2015 Summer Budget, the United Kingdom Government announced that it would consult on new measures to increase compliance and tax transparency in relation to large business tax strategies. These will include the introduction of a 'special measures' regime to tackle businesses that persistently adopt highly aggressive behaviours including around tax planning, a voluntary Code of Practice defining the standards HM Revenue and Customs (HMRC) expects large businesses to meet in their relationship with HMRC, and a requirement for large businesses to publish their tax strategy.<sup>3</sup>

In March 2015, the European Commission presented a package of measures to increase tax transparency. It will be submitted to the European Parliament for consultation and the European Council for agreement. A key element includes assessing possible new transparency requirements for multinational businesses.<sup>4</sup>

The G20/OECD Base Erosion and Profit Shifting (BEPS) Action Plan<sup>5</sup> is an internationally coordinated approach to address weaknesses in the international tax system. It includes a number of action items that relate to tax transparency. Under

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1 *Taxation Administration Act 1953*, section 3C.

2 See, for example, Rio Tinto's 2014 taxes paid report, [www.riotinto.com/documents/RT\\_taxes\\_paid\\_in\\_2014.pdf](http://www.riotinto.com/documents/RT_taxes_paid_in_2014.pdf).

3 HMRC, 8 July 2015, 'Summer Budget 2015: HM Revenue and Customs overview', accessed 15 July 2015, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/447313/Improving\\_Large\\_Business\\_Tax\\_Compliance.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/447313/Improving_Large_Business_Tax_Compliance.pdf).

4 European Commission, 2015, 'Transparency and the fight against tax avoidance', accessed 15 July 2015, [http://ec.europa.eu/taxation\\_customs/taxation/company\\_tax/transparency/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/company_tax/transparency/index_en.htm).

5 OECD (2013), Action Plan on Base Erosion and Profit Shifting, accessed 10 September 2015, <http://dx.doi.org/10.1787/9789264202719-en>.

Action Item 13, the OECD has developed rules regarding transfer pricing documentation to enhance transparency for administration by tax authorities.

These rules include a requirement that multinational enterprises provide relevant governments and tax authorities with a Country-by-Country report. The Country-by-Country report includes information on their global allocation of the income, economic activity and taxes paid among countries according to a common template. The OECD presented its final package of recommendations<sup>6</sup> to give effect to the BEPS Action Plan on 5 October 2015 and a bill introducing Country-by-Country reporting to Australia is awaiting Royal Assent.<sup>7</sup>

The Extractive Industries Transparency Initiative (EITI) is a global standard to promote open and accountable management of natural resources. Countries implementing the EITI require companies to disclose information on tax payments, licences, contracts, production and other key elements around resource extraction.<sup>8</sup>

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6 See OECD (2015), Explanatory Statement, OECD/G20 Base Erosion and Profit Shifting Project, OECD. [www.oecd.org/tax/beps-explanatory-statement-2015.pdf](http://www.oecd.org/tax/beps-explanatory-statement-2015.pdf).

7 Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015.

8 Extractive Industries Transparency Initiative, 2015, 'What is the EITI?', accessed 14 September 2015, <https://eiti.org/eiti>.

## 4 BALANCING COMMUNITY EXPECTATIONS AND THE CONCERNS OF BUSINESSES

### 4.1 CONSIDERATIONS IN DESIGNING THE TTC

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:

- compliance costs and regulatory impact;
- the impact on the self-assessment system for taxation;
- commercial confidentiality;
- misunderstanding of published information;
- reciprocity – whether other countries will require companies to disclose similar information under transparency initiatives; and
- lack of consistency in transparency initiatives between countries.

The Board believes it is in the interests of businesses to adopt the TTC at the earliest opportunity.

The TTC has also been designed having regard to existing international best practice with regard to tax disclosure, including the 'taxes paid' and CSR reports described at 3.2 above.

By aligning the TTC with existing best practice, the Board has sought to ensure that, upon commencement of the operation of the code, there will already be a core group of industry leaders that can demonstrate compliance with most of its principles. Where the TTC exceeds existing practices, the Board has sought to ensure that additional disclosures can be prepared with minimal additional cost.

The Board believes that creating the settings for the ready adoption of the TTC will assist in the promotion of transparency and disclosure within the wider business community.

### 4.2 EDUCATING THE COMMUNITY ABOUT THE BUSINESS TAX SYSTEM

The business tax system and tax accounting for businesses are complex areas not easily accessible to non-expert readers of financial statements and other tax disclosures. The public interest in tax disclosure will be best served if there is a concerted and ongoing effort to raise the level of understanding of business taxation.

Businesses and industry associations have a particularly important role in educating the community. The Board notes, for example, that the Chamber of British Industry recently prepared a document to brief the public on the British company tax system

and to address nine misunderstood concepts that lead to confusion about how much tax a business should pay.<sup>9</sup> Many of the misconceptions identified are equally relevant to the Australian business tax context.

One common misconception that could usefully be addressed through public education concerns the reasons why effective tax rates may be lower than the headline tax rate. For example, many governments provide tax incentives to businesses which invest in designated research and development activities. Recoupment of prior year losses, exposure to foreign exchange fluctuations and conducting overseas operations are other factors which may have the effective of reducing the effective tax rate.

The Corporate Tax Association (CTA) has informed the Board that it is developing a document, similar to the one published by the Chamber of British Industry, but adapted for the Australian tax system. The Board welcomes the CTA's commitment in this regard.

Businesses can also assist in educating the community by ensuring that disclosures are presented in a user friendly format that makes them accessible and meaningful to non-expert users. For example, some users will be assisted by the use of plain English, explanations of technical concepts, diagrams and pie charts.

Another way that businesses can ensure that disclosures are meaningful is by presenting comparative data over several years to demonstrate longer-term trends in tax payments. Businesses could therefore consider presenting comparative data over time as subsequent annual disclosures are made.

The ATO also has an important role in improving confidence in the tax system, by:

- monitoring corporate income tax performance and the health of the tax system over time;
- assuring the public that Australia has a robust legislative and administrative framework in place to address international tax avoidance, including strong transfer pricing, general anti-avoidance, thin capitalisation and controlled foreign corporation rules; and
- educating the public about how Australia's taxation rules operate in respect of certain business entities, tax structures and industries.

The Board notes that 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.<sup>10</sup> These observations lend perspective to the public debate on tax compliance by businesses.

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9 Chamber of British Industry, 2015, 'Tax and British business – Making the Case', accessed 18 September 2015, [www.cbi.org.uk/media/1456721/tax\\_and\\_british\\_business\\_making\\_the\\_case.pdf](http://www.cbi.org.uk/media/1456721/tax_and_british_business_making_the_case.pdf).

10 ATO Submission – Senate Economics Reference Committee: Inquiry into corporate tax avoidance and minimisation, 2 February 2015.

## 5 WHO ARE THE POTENTIAL USERS OF TTC DISCLOSURES?

Potential users of information disclosed under the TTC can be broadly grouped into three categories:

1. 'General users' – the 'person in the street' and the community at large;
2. 'Interested users' – shareholders, analysts, investors, social justice groups, media and politicians; and
3. Revenue and regulatory authorities – the ATO and ASIC.

The TTC should be designed to meet the information needs of the first and second group of users. 'General users' would be best served by a simplified, standardised disclosure, focusing on the tax contribution of a business to Australia. In addition, 'interested users' require more detailed information about a business's tax affairs, through improved tax disclosures and more information about international dealings and tax paid.

It is critical that the ATO has access to all of the information it needs to perform its functions. However, it will not be a key user of the information disclosed under the TTC, as it has access to far more detailed information about the tax affairs of businesses than is proposed under the TTC. This includes tax return data, the International Dealings Schedule, Advance Pricing Arrangements and, in the near future, the Country-by-Country report. The ATO also has extensive investigative and audit powers, and can obtain information about the international related party dealings of businesses operating in Australia under Exchange of Information arrangements with its tax treaty partners.

## 6 WHO SHOULD DISCLOSE?

The Board considers that the TTC should be targeted to larger businesses. Most of the public interest is focussed on the tax affairs of large business, including both Australian-headquartered businesses and foreign multinationals.

For the purpose of the TTC:

1. An Australian-headquartered business is generally taken to mean an Australian company (or entity that is treated as a company for Australian tax purposes), or an accounting consolidated group headed by an Australian parent.
2. A foreign multinational business is generally taken to mean an accounting consolidated group headed by a non-Australian parent.

### 6.1 LARGE BUSINESSES

The Board recommends that the full content of the TTC (Part A and Part B) should be disclosed by 'large businesses'. 'Large businesses' are defined as businesses with a 'TTC Australian turnover' of AUD 500 million or more, calculated as follows:

- In respect of an Australian-headquartered business: the TTC Australian turnover is the turnover of the Australian entity, or the income tax consolidated group headed by an Australian parent; and
- In respect of a foreign multinational business: the TTC Australian turnover is the turnover of the accounting consolidated group headed by a foreign parent to the extent that the turnover relates to:
  - any Australian entities or an Australian tax consolidated group; and
  - any foreign entities to the extent that the turnover is attributable to a permanent establishment in Australia.

### 6.2 MEDIUM BUSINESSES

In addition, businesses with a TTC Australian turnover greater than AUD 100 million but less than AUD 500 million ('medium businesses') should adopt Part A of the TTC. Specifically, 'medium businesses' can adopt the recommendations for improved tax disclosures either in their Australian financial reports (whether general purpose or special purpose) or via publication of a 'taxes paid' report at their option.

The publication of a 'taxes paid' report (refer 9.2 below) is not part of the minimum standard for 'medium businesses' provided those businesses prepare general purpose financial statements. Where a 'medium business' does not prepare general purpose financial statements the Part A disclosure should be made in another document.

## 7 TYPES OF ENTITIES COVERED BY THE TTC

Most large businesses in Australia operate through company structures or through entities that are treated as companies for Australian tax purposes. The Board has designed the TTC with these types of structures in mind.

Unlike companies, most partnerships and trusts are 'tax transparent'. That is, the tax on profits is typically paid by the partners, beneficiaries or unit holders, rather than by the business entity. In addition, superannuation funds are taxed under special rules that significantly differ from the taxation of companies, partnerships and trusts.

Further, these types of businesses are generally not subject to the same reporting requirements as companies. In light of these differences, the Board considers that the code, in its current form, should extend only to companies and entities taxed like companies.

Nonetheless, a superannuation fund, trust or partnership may wish to voluntarily adopt the TTC, by adapting its principles as far as possible. For example, it could reconcile its accounting profits to taxable income, rather than to tax paid, with an explanation as to the tax treatment of that taxable income to material categories of recipients of income.

## 8 HOW SHOULD THE TTC BE DISCLOSED?

### 8.1 THE TTC DISCLOSURE

The TTC disclosure should be delivered by improvements to tax disclosures in financial statements (Part A – refer 9.1 below) and/or preparation of a ‘taxes paid’ report (Part B – refer 9.2 below) as relevant depending on the size of the business, and whether it prepares general purpose financial statements.

A ‘taxes paid’ report that is separate from the financial statements is likely to be more accessible to general users of the TTC and would avoid the need to bring the report into the financial statement audit process (refer 10.1 below). A ‘taxes paid’ report will also allow for more extensive qualitative information to be included. The report could be a stand-alone report or could be included in a broader CSR report or any integrated reporting initiative.

Foreign multinational businesses that are ‘large businesses’ should include the accounting disclosures of tax information noted at 9.1 below in their ‘taxes paid’ report, if they do not prepare Australian general purpose financial statements. This would ensure that these businesses are subject to similar TTC content recommendations as Australian ‘large businesses’, which are usually required to prepare general purpose financial statements.

Businesses should adopt both a quantitative and qualitative approach to explaining their tax affairs in both the ‘taxes paid’ report and the improved tax disclosures in financial statements.

The Board believes that tax reporting should meet a consistent minimum standard of content, but it does not intend to prescribe templates or precisely dictate the form of the disclosure. It is anticipated that many businesses will publish more information than is recommended by the TTC due to their corporate approach to transparency, international transparency requirements or particular circumstances that warrant further explanation.

The timing of the release of the annual ‘taxes paid’ report would not be prescribed.

## 9 WHAT INFORMATION SHOULD BE DISCLOSED?

### 9.1 PART A: IMPROVEMENTS TO DISCLOSURES OF TAX INFORMATION IN FINANCIAL STATEMENTS

#### A reconciliation of accounting profit to income tax paid or income tax payable

##### Minimum standard for 'large businesses' and 'medium businesses'

The Board recommends that the tax disclosures in general purpose financial statements should be expanded to include a reconciliation of accounting profit to income tax expense, and from income tax expense to income tax paid or income tax payable.

The reconciliation should identify material temporary or non temporary differences.

Where Australian general purpose financial statements are not prepared, this reconciliation should be set out in the 'taxes paid' report or another document. This will ensure that these businesses are subject to similar TTC content recommendations regardless of whether they prepare Australian general purpose reports.

In the interests of minimising compliance costs, inclusion of a reconciliation in the 'taxes paid' report prepared at a global level is acceptable provided that reconciliation identifies material temporary and non-temporary differences. Where general purpose accounts are not prepared the rate reconciliation should be in the 'taxes paid' report.

#### Effective tax rates for Australian and global operations

##### Minimum standard for 'large businesses' and 'medium businesses'

Businesses should disclose an Australian accounting effective tax rate (ETR) and a global ETR for the worldwide accounting consolidated group calculated based on company tax expense.

The ETRs should be calculated as company income tax expense divided by accounting profit. This method of calculation will allow for an accurate comparison to the company tax rate.

ETRs can be calculated on different bases, inviting possible criticism that they can potentially be misleading to those seeking to understand how a given ETR compares to the company tax rate. Calculation of the ETR based on company tax expense only will enable the users of the disclosure to make comparisons both to the company tax rate and to other companies.

Businesses in certain industries may choose to publish an additional ETR based on a 'total tax expense' figure that includes taxes other than income tax. Where businesses

choose to do so, the basis on which the additional ETR has been calculated should be clearly identified.

The Board has specified that the global ETR should be calculated 'for the worldwide accounting consolidated group' of which the Australian operations form a part.

The Board does not recommend that businesses publish ETRs calculated using the ATO's 'effective tax borne' methodology as part of the TTC disclosure. The Board's consultations revealed little support for publication of effective tax borne calculations, as they are too complex and not suitable for public disclosure under the TTC.

## **Role of the AASB**

The Board also considers that the AASB should play a broader role in the effective operation of the TTC by developing guidance material to assist businesses in meeting the minimum standards required by the TTC. In particular, the AASB can assist the process by establishing a common definition of ETR to ensure consistency and comparability of disclosures made under the code. The definition should address such issues as the treatment of amended assessments, impairments, foreign currency translation, refunds and penalties.

## **9.2 PART B: 'TAXES PAID' REPORT**

### **Minimum standard for 'large businesses'**

As set out below, the 'taxes paid' report should include information on the business's:

- tax policy, tax strategy and governance;
- total tax contribution; and
- international related party dealings.

## Tax policy, tax strategy and governance

### Minimum standard for 'large businesses'

The 'taxes paid' report should include a qualitative section providing information about the business's approach to tax policy, tax strategy and governance. It should include:

- An overview of the business's operations (perhaps adapted from directors' reports);
- Its 'tax policy' or 'tax strategy', including:
  - Overview of internal governance in relation to taxation, for example, controls to help mitigate tax risks, and how management can test and provide assurance for their operational effectiveness<sup>11</sup> ;
  - Approach to tax risk management;
  - Attitude to tax risk and appetite for tax planning;
  - Approach to engagement with the ATO and other tax authorities; and
  - A description of the assurance regimes it is subject to, for example, internal audit, external audit, Advance Compliance Agreements, Advance Pricing Arrangements (APAs) , ATO pre-lodgement compliance reviews and the ATO risk rating (under the Risk Differentiation Framework).

While the ATO has indicated that it cannot provide a Risk Differentiation Framework rating on a real time basis, a business's historical risk rating is likely to be of interest to the community.

The Board does not believe it is necessary to disclose disputes with revenue authorities as part of the TTC. These will be subject to accounting or ASX disclosures if material.

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<sup>11</sup> See, for example, ATO, 2015, 'Tax risk management and governance review guide', accessed 23 September 2015, [www.ato.gov.au/Business/Large-business/In-detail/Key-products-and-resources/Tax-risk-management-and-governance-review-guide/](http://www.ato.gov.au/Business/Large-business/In-detail/Key-products-and-resources/Tax-risk-management-and-governance-review-guide/).

## Tax contribution summary

The tax contribution of a business to Australia includes more than just corporate income tax.

### Minimum standard for 'large businesses'

The 'taxes paid' report should include a tax contribution summary with core and optional elements, as follows:

- [Core element] disclosure of corporate income tax;
- [Optional element] disclosure of other taxes and imposts paid to Government, for example Petroleum Resources Rent Tax, royalties, excises, payroll taxes, stamp duties, fringe benefits tax and state taxes;
- [Optional element] disclosure of each Government impost collected by the business on behalf of others, for example, GST and Pay As You Go withholding taxes.

The Board suggests that businesses consider the use of charts, diagrams and trend data to improve communication of this information to the public.

The optionality of disclosing taxes other than corporate income tax reflects differing views between stakeholders about the merits and compliance costs involved.

## International related party dealings

A business's dealings with international related parties have particular relevance for the 'interested users' of the TTC. 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 considered a quantitative approach that would involve the detailed disclosure of the dollar amount of international related party dealings. However, the Board considers the disclosure of this information, apart from raising issues of commercial sensitivity, may not be meaningful to the intended users of the TTC. The Board considers that the public interest is better served by a qualitative explanation of the nature of related dealings and measures that have been put in place to manage the associated tax risks. This qualitative explanation would include, but would not be confined to, dealings which would generally be regarded as tax sensitive.

### Minimum standard for 'large businesses'

The 'taxes paid' report should provide a 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.

The Board acknowledges the risks of businesses publicly disclosing the information noted above, including the risk of reputational damage caused by misunderstanding of this information. However, the Board believes it is necessary for the TTC to include this information in light of community concern and media coverage of tax issues. Businesses may address these risks by carefully explaining the commercial context of these arrangements.

As noted above, the Australian Government has introduced legislation to implement the OECD's recommendations on Country-by-Country reporting. Although this is an important initiative to provide the ATO with enhanced information in relation to transfer pricing, it should be noted that Country-by-Country reporting is designed as a risk management tool for revenue authorities rather than a public disclosure regime. The Board recommends against any component of the OECD Country-by-Country reporting being made the subject of mandatory public disclosure under the TTC.

### **International sales to Australians by foreign multinationals**

The Board considered an approach under which international supplies to Australians by foreign multinationals would be disclosed in the 'taxes paid' report under the TTC.

Foreign multinational businesses can in some instances sell goods or services to Australian customers without being subject to Australian income tax. However, while there may be a public interest in the tax payments of these entities, the Board does not consider that this interest would be served by requiring foreign multinationals to disclose sales to Australian customers.

In coming to its view, the Board has had regard to the Government's announcement in the 2015-16 Budget of a Multinational Anti-avoidance law (MAAL) to combat artificial or contrived arrangements to avoid the attribution of profits to Australia through a taxable presence in Australia.<sup>12</sup> The rules, expected to operate from 1 January 2016, will create an incentive for relevant foreign multinationals to restructure their Australian-connected activities to create a taxable presence in Australia. When this occurs, these businesses will be subject to the TTC, as appropriate, in accordance with the eligibility test set out in section 6 above.

For foreign multinational businesses selling to Australian customers from outside Australia in circumstances that are not a target of the MAAL, recommending disclosure of Australian-connected sales under the TTC would impose an unnecessary compliance burden, in circumstances where they are not subject to Australian income tax.

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<sup>12</sup> The proposed measure is contained in Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015 which is currently awaiting Royal Assent.

## 10 OTHER CONSIDERATIONS

### 10.1 ASSURANCE OF THE TTC INFORMATION

To reduce the cost of implementation the Board does not recommend that the content in the 'taxes paid' report (refer 9.2 above) be mandatorily subject to audit. Businesses already obtain significant assurance on much of the content referred to above through external and internal audit procedures, and the improved tax disclosures (refer 9.1 above) would naturally be subject to normal audit processes for financial statements. Additionally, the business should assure itself that all of its disclosures are capable of being reconciled to its income tax return and financial statements.

Additional oversight or penalties for misleading disclosure of TTC information are not recommended. It is expected that the 'taxes paid' report will be signed off by senior management in the organisation, and there would be significant impacts on the reputations of businesses that are found to have made misleading disclosures.

Businesses should apply materiality concepts in preparing TTC disclosures. These should be chosen on a basis which is appropriate for the size of the relevant business and its activities in Australia, and is consistent with the spirit of the code.

### 10.2 OTHER GOVERNANCE CONSIDERATIONS

The Board recommends that the ATO or another government agency be appointed as the 'responsible agency' for the administration of the TTC.

Businesses would be asked to notify the responsible agency when the report has been published and provide it with an electronic link (for example, a link on the business website). The responsible agency would operate a central website that links to all publicly issued reports.

### 10.3 COMPLIANCE COSTS

Many Australian and foreign multinational businesses intend to adopt the EU directive on tax transparency, the EITI or the Dodd-Frank transparency measures. Businesses may elect to satisfy the minimum standards of the Australian TTC by publishing the required Australian TTC information as part of other disclosure documents.

### 10.4 COMMENCEMENT AND REVIEW

The Board considers that the TTC should be in operation in time for the reporting period for 2015-16 financial statements or annual reports.

The Board recommends that the TTC be subject to a Government review three years from the commencement of its operation.

## 11 SUBMISSIONS

The Board invites written submissions to assist with its review. Submissions should address the issues outlined in this consultation paper and any other matter stakeholders consider relevant.

The closing date for submissions is 29 January 2016.

Submissions can be sent by:

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

Facsimile:     (02) 6263 2617

Email:         taxtransparency@taxboard.gov.au

Stakeholders making submissions should note that Board members, the review team, and those assisting it, will have access to all submissions. All information (including name and contact details) contained in submissions may be made available to the public on the Board's website unless it is indicated that all or part of the submission is to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like only part of their submission to remain in confidence should provide this information marked as such in a separate attachment. A request for a submission to be made available under the *Freedom of Information Act 1982* (Commonwealth) that is marked 'confidential' will be determined in accordance with that Act.

## APPENDIX A: GLOSSARY

AASB	Australian Accounting Standards Board
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
ATO	Australian Taxation Office
BEPS	base erosion and profit shifting
Board	Board of Taxation
CTA	Corporate Tax Association
CSR	corporate social responsibility report
EITI	Extractive Industries Transparency Initiative
ETR	effective tax rate
GST	goods and services tax
HMRC	HM Revenue and Customs
MAAL	Multinational Anti-avoidance Law
OECD	Organisation for Economic Co-operation and Development
TTC	Tax Transparency Code