

# Tax Transparency

## *Where Australia currently stands*

*November 2022*

Corporate Tax Association (CTA) members accept the need for sensible and useful disclosure of tax information by large business. Appropriate tax disclosures can inform public debate, tax policy design and assist the Australian Taxation Office (ATO) in directing its compliance resources to where they are most effective.

When assessing the future direction of tax transparency in Australia, it is helpful to understand the significant level of tax disclosure large companies are already complying with before determining what further disclosures might be required.

Tax disclosures occur at three levels:

1. Public disclosures;
2. Taxpayer to ATO disclosures; and
3. Information exchanges between tax authorities.

### **1. Public disclosures**

#### **Public reporting of entity tax information**

Since December 2015, the ATO has published the name, total income, taxable income and income tax and petroleum resource rent tax payable of public and foreign-owned corporate tax entities with total income over \$100 million and private companies<sup>1</sup> with total income of \$200 million or more. Only Denmark, Sweden, Finland and Norway have laws under which similar information can be publicly disclosed by Tax Authorities.

#### **Voluntary Tax Transparency Code**

The Board of Taxation released its Voluntary Tax Transparency Code (VTTC) for the increased public disclosure of tax information by businesses in May 2016. As at 31 October 2022, 202 groups have either published yearly VTTCs or registered their intention to adopt the VTTC. Our estimate is that these groups cover approximately 46% of total income, 67% of taxable income and 64% of tax payable by entities subject to the reporting requirements.

#### **Extractive industries transparency initiative**

Companies in the extractive industries which are headquartered in the US, Canada and Europe must disclose certain tax data on payments made to Governments around the world.<sup>2</sup> In May 2016, Australia agreed to implement the Extractive Industries Transparency Initiative (EITI).<sup>3</sup>

Under the EITI, information is also voluntarily shared on the amount of taxes paid to various Governments, including those outside the US, Canada and Europe. Most of the large mining and oil and gas companies operating in Australia are currently subject to this initiative or voluntarily comply with it. Similar sorts of tax disclosures are also required for financial institutions that operate in Europe.<sup>4</sup>

## Financial Reporting Disclosures

Australian and international accounting standards require publicly listed companies to include tax information in their financial accounts which detail the calculation of their tax liability for a particular year and why this differs from the tax rate applicable in its home jurisdiction.

Accounting standards also require material related party transactions to be disclosed in the financial accounts of publicly listed entities.<sup>5</sup> From 1 July 2019, Country by Country reporting entities that are also corporate tax entities with an Australian presence must also provide to the ATO (if they are not provided to ASIC) copies of general purpose financial statements.<sup>6</sup>

## 2. Proposed New Public Disclosure Requirements

### R and D Disclosures

As soon as practicable after the period of two years following the end of the financial year, the Commissioner must publish information about the R&D entities that have claimed notional deductions for R&D activities, including the amount claimed.<sup>7</sup> The first disclosures for the 30 June 2022 year are expected to be published after 30 June 2024.

### EU directive on CbC reporting

Multinational groups with entities or branches in the European Union (EU) need to publish their country-by-country (CbC) reports under new EU rules. The European Parliament formally adopted the public EU CbC reporting directive on 11 November 2021.<sup>8</sup>

EU Member States have until June 2023 to implement the directive of the public disclosure or certain Country by Country Reporting into domestic law, and the rules would become applicable from June 2024 (i.e., applying with respect to financial years starting on or after this date (note this is a deadline set up by the EU; separate EU Member States may decide to apply the rules sooner)).

### October budget announcements

In the 2022-23 Federal Budget, the Government announced<sup>9</sup> that from 1 July 2023, significant global entities will need to provide certain information on a country-by-country basis, similar to the EU directive on CbC reporting, that the ATO would publish. Also, Australian public companies would have to disclose the number of subsidiaries and their country of tax domicile and companies tendering for Australian Government contracts worth more than \$200,000 would have to disclose their head company's country of tax residence.

## 2. Taxpayer to ATO disclosures

### Country by Country reporting

Australia has adopted the OECD Country by Country (CbC) reporting recommendations with effect from 1 January 2016. The CbC reporting regime requires companies with a global turnover of over \$1 billion to provide details of revenues, profit, taxes paid, taxes accrued, stated capital, accumulated earnings, number of employees, tangible assets and types of transactions for all tax jurisdictions in which they operate. This information will be provided to the ATO and will also be shared with other tax authorities around the world. Detailed supporting documents known as master and local files will also be provided to the ATO. Australia was one of the first OECD countries to adopt CbC reporting.

### Disclosure of all international related party dealings to the ATO

Current annual corporate tax returns require companies to provide detailed disclosures to the ATO including all international related party dealings via an International Dealings Schedule. This information includes the type of dealing, its quantum and the location of all international related party transactions, including those in low or no tax jurisdictions.

### Preparation of transfer pricing documentation for related party transactions

Large corporate taxpayers are required to fully document related party transactions outlining to the ATO the basis of any related party dealing including the methodology adopted to price them.

### Reportable Tax Positions schedule

Larger corporate taxpayers are required to disclose any “reportable tax positions” (or positions taken that are not reasonably arguable) to the ATO. The reportable tax positions schedule will also require large public corporate taxpayers with over \$250 million in turnover to report on any transactions that are substantially similar to arrangements outlined in certain Taxpayer Alerts, Rulings and Practical Compliance Guidelines to the ATO as part of the annual tax return process.

### Top 100 and Top 1,000 Justified Trust program

The 100 largest corporates operating in Australia are currently subject to real time risk assessments under the ATO's Justified Trust program. The Top 100 companies in Australia pay about 65% of all corporate income tax paid by groups with turnover greater than \$250 million. This means that 65% of all corporate income tax paid is continually monitored by the ATO through the program. The Top 100 approach uses the OECD's 'justified trust' methodology where the ATO seeks to assure the community of corporates' tax performance, areas of potential risk and possible disputes in real time, before the lodgement of tax returns. The Justified Trust initiative covers a review of underlying tax performance of Australian linked businesses, tax governance, an understanding of significant tax issues and a deeper understanding of issues that may be subject to Tax Alerts or various ATO rulings and guidance.

The ATO is also undertaking a similar 'justified trust' program for the next 1,000 largest corporates (Top 1000). The ATO is also in regular contact with large corporates as part of its ongoing revenue monitoring processes and consistently seeks information on tax payments, including reasons why tax payments may vary from what is anticipated.

## 3. Information exchanges between tax authorities

### Tax treaty and information exchange networks

Australia has a network of 46 tax treaties with major trading partners as well as 36 Tax Information Exchange Agreements with countries which some regard as tax secrecy (or tax haven) jurisdictions. This treaty and agreement network enables the ATO to seek information from other tax authorities about tax-related matters of corporate taxpayers.<sup>10</sup> Australia is also a signatory to the Multilateral Convention on Mutual Administrative Assistance on Tax Matters which includes the automatic and spontaneous sharing of tax information between 144 countries, as well as allowing for simultaneous tax audits and assistance in the recovery of tax.<sup>11</sup>



## ATO led transparency initiatives

The ATO is also part of a global network of 52 tax authorities called the Forum on Tax Administration<sup>12</sup>, as well as 42 tax authorities involved in JITSIC (Joint Income Tax Shelter Information and Collaboration Network)<sup>13</sup> and 18 Asian tax authorities involved in SGATAR<sup>14</sup> (the Study Group of Asian Tax Administration and Research) through which tax information and best practice is regularly shared on tax risks with other tax authorities.

## SUMMARY

The CTA acknowledges the value of appropriate and useful disclosure of tax information and supports initiatives that contribute to a better understanding of the corporate tax system and of those who comply with it. It is however important to recognise and understand that companies operating in Australia are already subject to substantial levels of disclosure with a myriad of tax information shared publicly, with the ATO and between tax authorities.

**In determining how tax transparency can best contribute to public confidence in the tax system, all stakeholders should support tax transparency measures that build and maintain confidence and trust in the integrity of the tax system. Measures that exacerbate misunderstandings of how the corporate tax system operates or paint an inaccurate picture of how corporate taxpayers interact with the system will not achieve this objective.**

November 2022

**The Corporate Tax Association is the key representative body for major companies in Australia on corporate tax issues. Our objectives are to:**

- increase community and Government awareness around the effectiveness and integrity of the Australian corporate tax system and the significant and ongoing contribution large business makes to Australia
- influence and develop tax policy that contributes to a corporate tax system under which large corporates cooperatively meet their tax obligations within a globally competitive tax system
- improve the administration of the corporate tax system and reduce the cost of compliance
- facilitate the implementation of best practice among our members by promoting corporate transparency and assisting and supporting them in their interactions with the Australian Taxation Office, the Treasury and Government
- provide ongoing peer support and thought leadership through an ongoing program of initiatives aimed at supporting its' professional development

For more information, please refer to the CTA website at: [Corporate Tax Association](#)

## End Notes

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- 1 From the 2023 income year onwards, information from Australian-owned resident private companies with an income of \$100 million or more will be included.
- 2 See the Dodd-Frank Act in the US, the EU accounting directive and the Canadian Extractive Sector Transparency Measures Act.
- 3 See: [EITI-Australia](#)
- 4 EU capital requirement directive (CRD IV) requires certain financial institutions to publicly disclose certain tax data. See [CRDIV](#)
- 5 See Australian Accounting Standards AASB 101 – Presentation of financial statements, AASB 112 – Income taxes and AASB 124 - Related party disclosures. All accounting disclosure requirements can be found at: [Accounting standards](#)
- 6 See ATO website at [General purpose financial statements. Between 1 July 2016 and 30 June 2019, this requirement applied to significant global entities \(companies that are part of a global group with turnover over \\$1 billion\) that are also corporate tax entities.](#)
- 7 See 3H of the Tax Administration Act 1953
- 8 See [Directive \(EU\) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches \(Text with EEA relevance\) - Publications Office of the EU \(europa.eu\)](#)
- 9 See the [October 2022-23 Budget announcement](#) titled 'Multinational Tax Integrity package – improved tax transparency'
- 10 A full list of tax treaties and tax information exchange agreements can be found at: [Tax treaties](#)
- 11 See [The multilateral convention on mutual assistance in tax matters](#)
- 12 Further details on the Forum on Tax Administration can be found here [FTA](#)
- 13 Further details on JITSIC can be found here: [JITSIC](#)
- 14 Further details on SGATAR can be found here: [SGATAR](#)