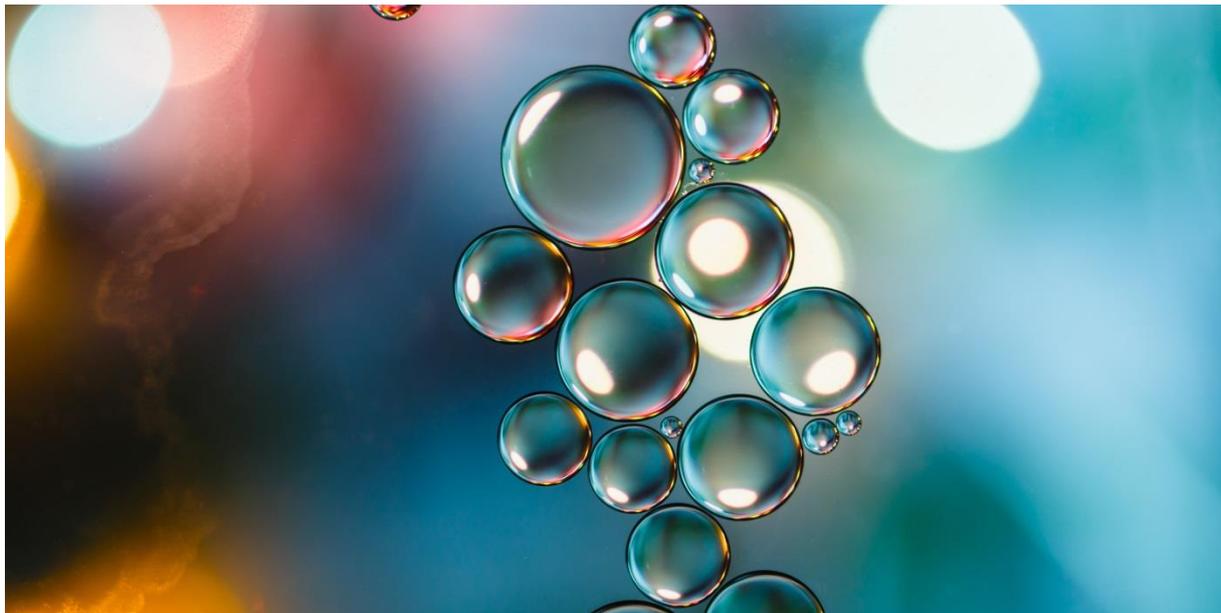


## Tax insights

# Your tax affairs in the public spotlight: the Australian tax transparency code



### Snapshot

On 3 May 2016, the Government released the Board of Taxation's final report on a voluntary Tax Transparency Code (**the Code**), which is directed at large and medium businesses and provides a framework for such businesses to disclose more information about their tax affairs.

The Board had previously released a Discussion Paper containing its preliminary recommendations on 11 December 2015 for public consultation. The Board received 19 submissions, one confidential and 18 public, the vast majority of which were broadly supportive of the Board's preliminary recommendations. As such, the Board's final

report does not differ materially from the Discussion Paper.

The Code is pitched at two distinct levels, one for large and one for medium businesses, with large business being urged to provide a greater level of disclosure.

The Board considers the Government's commitment to implementing the Code reflects an international trend of countries mandating or encouraging increased transparency of tax information.

The Board proposes the Code be adopted for financial years ending after the Government released the final report. This means businesses with a 30 June year-end would be encouraged to adopt the Code in respect of the year ended 30 June 2016.

### Introduction

On 12 May 2015, in an environment of mounting pressure for large corporates to be more transparent on tax matters, the then Treasurer, Joe Hockey, announced a 'Voluntary Tax Transparency Code' as part of the 2015-16 Federal Budget. The Treasurer requested the Board consult with business, Treasury and the Australian Taxation Office (ATO) to develop a voluntary code on increased public disclosure of tax information by companies, particularly multinationals.

The Board provided its finalised report to Government on 16 February 2016, which was subsequently released to the public on 3 May 2016 as part of the 2016-17 Federal Budget.

There are already a number of global and Australian groups which publish some of the tax related information covered by the Code. Indeed, it has been observed on a global level that the extent of voluntary tax transparency disclosures is increasing.

### Overview of the Code

The Board believes that it is in the interests of businesses to be more transparent about their tax affairs. To facilitate this, the Board is recommending a set of principles and 'minimum standards' to guide disclosure of tax information.

The Board expects that the Code will evolve, over time, in response to changes in corporate governance practices, the legal and commercial environment, and developments in corporate governance practices.

In designing the framework, the Board intentionally focused on larger businesses, because most of the public interest is focussed on the tax affairs of large business, including both Australian headquartered businesses and foreign multinationals.

In addition, the Code has been designed with regard to the information requirements of its target audience, which includes general users, shareholders, media, analysts and social justice groups, recognising that the ATO already has access to far more detailed information through various avenues.

Factors considered by the Board when drafting the Code include the following:

- Compliance costs;
- Commercial confidentiality; and
- Consistency with other local and existing, and emerging global reporting requirements.

The Board says that the Code is more advanced and more comprehensive than existing tax transparency measures developed by other countries or organisations. Furthermore, the Board has received strong support from businesses and associations.

*Business Council of Australia's submission in respect of the Board of Taxation's Discussion Paper on the Tax Transparency Code:*

*The Tax Transparency Code (TTC) will be an important addition to Australia's already robust suite of tax integrity measures, and the Business Council of Australia will encourage member companies to adopt it.*

*The Business Council of Australia supports tax transparency that is fit for purpose. Company reporting must balance the need to better inform stakeholders with the need to retain commercial confidentiality in some instances, and minimise compliance costs as much as possible.*

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## The Board expects the Code will be widely adopted

# The Corporate Tax Association (CTA) said it will encourage its members to adopt the TTC

## Why voluntary?

Despite the view of some for the Code to be mandatory, the Board recommends the Code remain voluntary. The Board believes a mandatory code will be treated as a compliance activity and delegated to lower levels within the organisation. In contrast, as a voluntary code, the Board expects the board of directors and/or senior management to be actively involved in both the decision to adopt the Code and the level of disclosure.

This appears to be in direct contrast with the view of the Senate Committee (Inquiry into Corporate Tax Avoidance). On 22 April 2016, the Senate committee released *Part 2: Gaming the system – its second report*. The committee recommends a 'Mandatory tax transparency code'. The Senate Committee does not believe that the voluntary Code will suitably incentivise companies that push the letter and spirit of the law to publish tax information. As such, the Senate Committee restates its recommendation that a mandatory tax transparency code be implemented.

## Who should disclose?

In general, the Code is to apply to corporate tax entities (CTE), being companies and other entities that are taxed like companies for Australian tax purposes. However, partnerships, trusts and superannuation funds may wish to voluntarily take the lead to become more transparent and adopt the principles of the Code.

CTA media release (9 May 2016):

*The CTA and its members strongly support the view that all large companies must meet their tax obligations in a timely and transparent manner and that they should pay their appropriate share of tax.*

*Adopting the TTC will also further demonstrate to the public that large companies are committed to being transparent in their tax affairs.*

Specifically, the Code identifies the following two business segments:

**Large business:** Businesses with aggregated Australian turnover of A\$500 million or more.

**Medium business:** Businesses with aggregated Australian turnover of at least A\$100 million, but less than A\$500 million.

'Australian turnover' for the purposes of the Code is calculated as follows:

- For Australian headquartered businesses - the turnover of the Australian entity, or the income tax consolidated group headed by an Australian parent; and
- For foreign multinational businesses - 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.

## What information should be disclosed?

As a minimum standard, the Board recommends that medium businesses should make Part A disclosures as outlined in the table below. Large businesses are encouraged to disclose the full content of the Code - Part A and Part B as outlined in the table. However, Part B contains both core and optional elements.

## Part A:

### Minimum standard disclosures:

- 1 A reconciliation of accounting profit to income tax expense and from income tax expense to income tax paid or income tax payable.
- 2 Identifying material temporary and non-temporary differences.
- 3 Provide accounting effective company tax rates (**ETR**) for Australian and global operations. The Board has asked the AASB to establish a common definition of ETR to ensure consistency and comparability of disclosures made under the Code: pending that, the ETR should be computed as income tax expense (company tax only) divided by accounting profit. The global ETR should be calculated 'for the worldwide accounting consolidated group' of which the Australian operations form a part.

## Part B:

### Minimum standard and optional disclosures

#### 1 Summary of tax policy, tax strategy and governance

Minimum standard disclosure	Optional disclosures
<p>A summary of the business's tax policy, tax strategy and governance, including the business's:</p> <ul style="list-style-type: none"><li>• Approach to risk management and governance arrangements;</li><li>• Attitude towards tax planning;</li><li>• Accepted level of risk in relation to taxation; and</li><li>• Approach to engagement with the ATO.</li></ul>	<p>In addition to the above, large business has the option to provide details about any of the following:</p> <ul style="list-style-type: none"><li>• An overview of the business's operations;</li><li>• The business's approach to engagement with tax authorities other than the ATO; and</li><li>• A description of the assurance regimes it is subject to, such as, internal audit, external audit, Advance Compliance Agreements, Advance Pricing Arrangements and ATO pre-lodgement compliance reviews.</li></ul>

#### 2 Australian tax contribution summary

Core element disclosure	Optional element disclosures
<ul style="list-style-type: none"><li>• Australian corporate income tax paid</li></ul>	<ul style="list-style-type: none"><li>• Other Australian taxes and imposts paid to Government, such as fringe benefits tax, Petroleum Resources Rent Tax, royalties and excises, payroll tax, stamp duties and other state taxes.</li><li>• Government imposts collected by the business on behalf of others, such as GST and Pay As You go withholding taxes.</li></ul>

#### 3 International related party dealings summary

Provide a qualitative disclosure of key categories of dealings with offshore related parties which have a material impact on the business's Australian taxable income, including the nature of material categories of dealings and the country in which the related party is located.

Although the Code is framed in terms of minimum standards, the Board fully expects that many businesses will provide additional disclosures.

## How is the information to be disclosed?

### Medium business

The Board's final report offers the following choices to medium businesses for making Part A disclosures:

- Provide more detailed disclosures in the business's Australian general purpose financial report, or
- Publish the information in:
  - a taxes paid report, or
  - some other document.

### Large business

For large businesses (i.e. subject to Part A and Part B) content can be disclosed as follows:

- Part A and Part B disclosed wholly within the taxes paid report; or
- Include Part A in the general purpose financial statements and Part B in a taxes paid report.

A taxes paid report could be a new and specific report addressing the matters in the Code, or a business could incorporate the Code content into other conventional taxes paid reports, such as:

- Corporate social responsibility reports;
- Global taxes paid reports;
- Extractive Industries Transparency Initiative reports, or
- European Union Tax Directive reports.

The Board considers the advantages of preparing a taxes paid report are that it would:

- Be more likely to be accessible to general users;
- Avoid the need to bring the report into the financial statement audit process;
- Allow more extensive qualitative information to be included; and
- Be more user friendly for general users.

The Board does not intend to be prescriptive about the form of the content published, but anticipates that many businesses will publish more information than required due to their corporate approach to transparency, international transparency requirements, or because of a

business's particular circumstances warranting further explanation.

The Board also recommended that the ATO be appointed as the 'responsible agency' in respect of the Code, and that businesses provide the agency with a link to the report. The responsible agency will not review or provide any assurance as to the completeness or accuracy of the information contained in such reports.

Moreover, there is no requirement to lodge any reports in respect of the Code. The Board recommends that businesses make their Code reports publically available (for example, by publishing it on the business's website).

### Single entity or aggregated disclosures

Where more than one entity within an accounting consolidated group is subject to the Code, a group can choose the level of aggregation or grouping when making Code disclosures. For example, a group can disclose on an entity by entity basis, or aggregate all relevant entities. This flexibility is aimed at mitigating compliance costs.

### Timing issues

The Board chose not to prescribe a deadline by which time companies should make disclosures under the Code.

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**The Board anticipates that many businesses will publish more information than required due to their corporate approach to transparency ...**

### Deloitte perspective

Although the Code is voluntary, we expect that many medium and large companies will comply with at least the minimum standard of reporting requirements.

If the code is not adopted voluntarily by most businesses on a widespread basis, business may find that the code becomes mandatory.

Tax transparency is here to stay, and business will face increasing expectations to be more transparent about their tax affairs. Some elements of tax transparency will be outside of the control of business (e.g. ATO reporting of tax paid data, media coverage or tax-activist groups issuing reports) and other elements of tax disclosure (e.g. general purpose financial statements) only provide limited data.

The Code should therefore be seen as a singular opportunity for business to proactively present the facts associated with the tax contribution of the business.

The key challenge will be to ensure that the facts are not only accurately presented but that they can be easily understood by non-tax professionals in the context of one of the world's most complex tax systems.

### Next steps

As there is no recommended format for publication of the information, this leaves each company to decide independently on the best approach. We would suggest the following methodology:

1. At the outset, companies may wish to carry out an initial review of tax information and tax-related comments they already publish either in their financial statements or in other documentation (e.g. corporate governance reports, responses to consultations and other public statements). This 'current state' of tax transparency can then be compared against the requirements of the Code and any 'gap' identified.
2. Liaise with internal stakeholders such as the Board, corporate governance, external and investor relation teams and consider whether it is appropriate to involve external stakeholders (e.g. auditors or analysts).
3. Gather the data and prepare the disclosures. Consideration should be given to ensuring that the public is able to easily understand the disclosures and can see the full extent of the tax contribution made by the business. Deloitte can provide assistance in this area either with drafting or reviewing the disclosures and benchmarking the approach with other proposed disclosures under the Code and under similar regimes around the world.
4. Consider preparing a 'Question and Answer' document with responses to anticipated questions about your disclosures, and designate an appropriate senior spokesperson for any media enquiries.
5. Obtain internal stakeholder approval, likely to be Board level, of the proposed disclosures.
6. Publish and provide a link to the responsible entity.

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