



Tax Insights

Tax Transparency Code: proposed increase in scope

Snapshot

On 26 February 2019, the Board of Taxation (the Board) issued a [Consultation Paper](#) seeking feedback on its proposed revised Tax Transparency Code (TTC). This follows on from targeted stakeholder consultation sessions conducted during 2018 as part of the Board's post-implementation review of the TTC. The TTC was originally endorsed by the Government in the 2016-17 Federal Budget.

The proposed changes to the TTC reflect changes designed to make the TTC easier to adopt and to increase its usefulness for users, in line with tax transparency trends globally. Invariably, the revised TTC is proposing to either impose as a minimum standard, or recommend as a best practice, a greater breadth (quantity) and depth (quality) of voluntary disclosures by affected businesses. It signals that public visibility of taxation and business affairs is set to intensify going forward.

This Tax Insights summarises the Board's recommended changes to the TTC and some practical implications businesses should consider. We also refer to some of Labor's tax transparency policies.

Submissions on the Consultation Paper close on 26 March 2019.

Context for the proposed TTC revisions

The Board's TTC provides a consistent set of principles and 'minimum standards' to guide disclosure of tax information by large and medium businesses¹. It is intended to complement Australia's existing tax transparency measures such as the Australian Taxation Office (ATO)'s publication of large companies' taxes paid data.

The TTC was first developed as a result of the Treasurer's directive to the Board as part of the 2015-16 Federal Budget to develop a standard of practice to promote greater public disclosure of tax information by large and medium-sized businesses. According to the Board², the objective was two-fold, namely to:

- Highlight those businesses that are paying their fair share of tax, thereby encouraging all businesses not to engage in aggressive tax avoidance, and
- Improve the public's understanding of the corporate sector's compliance with Australia's tax laws.

The Government released the Board's recommended TTC on 3 May 2016 and endorsed it in the 2016-17 Federal Budget. Notwithstanding the TTC is voluntary, the Government expects all responsible large and medium businesses operating in Australia to adopt it. To-date, approximately 160 organisations (estimated to represent more than 60 percent of taxable income and tax payable by companies potentially subject to the TTC) have committed to applying the principles and the details in the TTC³.

Since the TTC's introduction, tax disclosure and transparency expectations, and the scrutiny on organisations' tax practices, have continued to escalate both locally and internationally. It is against this backdrop that the Board has, at the Government's request, undertaken a post-implementation review of the TTC to collate feedback on its effectiveness and to identify potential improvements to enhance the simplicity and usefulness of the disclosures.

Summary of current TTC framework

Minimum disclosure standard		Large business	Medium business
Part A	<ul style="list-style-type: none"> • Tax expense and tax paid or tax payable reconciled to accounting profit • Material temporary and non-temporary differences • Effective tax rate reconciliation 		
Part B	<ul style="list-style-type: none"> • Tax strategy and governance approach • Australian tax contribution • International related party dealings 		

¹ A business is classified as a 'large business' if it has an aggregated TTC Australian turnover of at least A\$500 million or as a 'medium business' if it has an aggregated TTC Australian turnover of at least A\$100 million but less than A\$500 million. Broadly, the TTC Australian turnover includes the turnover of any Australian entity, Australian tax consolidated group or Australian permanent establishment within an economic group.

² The Board of Taxation, 'Development of the Voluntary Tax Transparency Code – Terms of Reference' (available at: <http://taxboard.gov.au/consultation/voluntary-tax-transparency-code/>) and 'Corporate Transparency Code and Register – The TTC' (available at: <http://taxboard.gov.au/current-activities/transparency-code-register/>).

³ The Board of Taxation's Register of Signatories to the TTC available at: <http://taxboard.gov.au/current-activities/transparency-code-register/>

In conducting its review, the Board has acknowledged that the competing aims of different stakeholders and potential users of the TTC information means there is a trade-off between the provision of meaningful information on the one hand, and simplifying disclosure obligations for businesses on the other. In balancing these dynamics, as far as possible, the Board's proposed changes seek to minimise the discloser's compliance burden by leveraging off existing information and disclosure obligations and aligning with global reporting regimes.

What's changing?

The key changes to the TTC as proposed by the Board are summarised as follows.

1. **'Basis of preparation' statement as a new minimum standard (for large and medium businesses)**

The revised TTC will require entities to explain the basis on which the tax transparency disclosures have been prepared, including:

- Treatment of non-wholly owned entities/operations
- Source of information
- Reporting currency
- Glossary of definitions
- Approach to materiality
- Whether Australian Accounting Standards Board (AASB) guidance has been followed in preparing the disclosures or otherwise explain the reasons for any departures, and
- The internal processes employed in compiling and verifying the information presented in a TTC report where the TTC disclosures have not been externally assured or audited.

Deloitte comment

Businesses are expected to apply due diligence and care in validating these disclosures.

Where proper processes are in place, these additional disclosures are likely to increase the community's level of trust and confidence in the robustness of the tax transparency disclosures and their reliability and comparability. However, they can also serve to expose any constraints faced, assumptions used and any weaknesses in an organisation's internal validation and control procedures.

Businesses will need to proactively consider establishing (if they have not already), and continuously improving, the internal assurance processes that produce their tax transparency information or consider seeking independent external assistance if necessary. Coherence with internal audit and other reporting and governance controls across the business will be important, as is having a single 'source of truth' as the basis for all public statements.

2. **Reconciling ATO tax paid data to tax transparency reports as a new minimum standard (for large and medium businesses)**

To reconcile or bridge the self-disclosures made in an organisation's TTC report with the data independently published by the ATO, the revised TTC will require the following information:

- The accounting profit which correlates to the 'total income' reported by the ATO in respect of relevant individual entities
- A reconciliation of the income tax paid and payable in the TTC disclosures to 'tax payable' reported by the ATO, and
- Any other explanation necessary to facilitate the understanding of users of the TTC report as to how the information reported by the ATO reconciles to the TTC disclosures. This may include:
 - Clearly identifying which entities in the ATO disclosures are covered by the TTC disclosures, and
 - Contextual information for the level of tax payments, such as the availability and use of tax losses.

To address differences in the timing between when an organisation releases its tax transparency report for a given year, when it completes and lodges its tax return for the year and when ATO data for the year is published, two options are recommended:

- Option 1: Publish a subsequent addendum to the tax transparency report after the income tax return lodgement for the year; or
- Option 2: Include a 'true-up' reconciliation for the previous year in each tax transparency report.

Deloitte comment

These recommendations address some fundamental contextual gaps or asymmetries that exist between the discrete disclosures presented in the mandatorily published ATO tax paid data for a business and that business' tax transparency report.

The Board identified that the reasons for this include the tendency for tax transparency reports:

- To reflect a calculation of the accounting provision for tax payable (consistent with the annual financial statements), not the actual tax liability shown on the lodged tax return
- To disclose actual cash tax paid in a year which may relate to one or more fiscal years, and
- To be prepared mainly for a single economic or accounting consolidated group. The published ATO tax paid data relates to taxpayer entities, which often will not align with the accounting group.

Further, the published ATO tax paid data is unhelpfully limited, at law, to the disclosure of total income, taxable income and tax payable by a business but not the accounting profit or loss before tax, leading to a propensity for some stakeholders to misinterpret a business' effective tax rate.

The additional tax transparency disclosures proposed by the Board will provide the opportunity for a business to present a more holistic picture of its tax performance/profile vis-à-vis its economic performance and explain any differences that may exist in the data sets presented in their tax transparency disclosures as compared to those published by the ATO. To be effective in practice, reconciliations should be clearly cross-referenced to source data and other relevant disclosures.

Labor in Opposition is proposing that the ATO disclosure of tax paid be expanded to include information such as tax losses utilised and other right-of-reply data. A business might prefer to voluntarily or proactively provide this information, supplemented by their own narrative and context, in the interest of making the information meaningful for its particular circumstances.

3. Improvements to the minimum standards (for large and medium businesses)

These include:

Applicable to large and medium businesses:

- Reconciling accounting profit to both income tax paid and income tax payable (not merely one or the other).

Applicable to large businesses only:

- Expansion of the minimum information to be disclosed on an organisation's tax policy, tax strategy and governance such as the board's oversight and tax risk assessment procedures for significant transactions.
- Expansion of the total tax contribution disclosure to incorporate other governmental taxes and imposts paid, including Petroleum Resource Rent Tax, royalties, excise, payroll taxes, stamp duties, Fringe Benefits Tax and state taxes. Taxes collected on behalf of others (such as Pay-As-You-Go withholding) and government payments that are 'fees for services' (such as WorkCover insurance), if disclosed, are to be distinguished and separated from other tax contribution disclosures.
- Specification of the minimum required international related party dealings information, namely:
 - The three largest dealings, by dollar value, between the Australian business and overseas related parties and how these transactions fit in with the broader business and the geography of the related counterparty, and
 - Positively state if there are no material international related party dealings.

Deloitte comment

Incrementally reconciling accounting profit to both tax paid and tax payable should not, in principle, be unduly arduous as it is already commonly done as part of the entity's statutory consolidated financial reporting obligations (such as the reconciliation of the provision for tax ledger account and the operating cash flow). However, detailing this information on an Australian taxpayer entity basis (to reconcile to ATO tax paid data) may require additional work.

The proposed expansion of tax governance disclosures to include board oversight and significant transaction review processes are in line with information requested by the ATO under a Justified Trust review.

Capturing all taxes paid in the total tax contribution summary would demonstrate a more complete picture, though arguably, an organisations' business activities have multiple flow-on community benefits such as job creation, and contribution to community infrastructure and economic independence, that may not be readily measured quantitatively.

To effectively categorise discrete government payments that are taxes, fees for service and collections on behalf of others, organisations may need to revisit and modify the way financial information is being captured at source, processed and ultimately reported (such as their chart of accounts and expense coding).

The consequences of the proposed enhanced disclosure of tax policy, governance and strategy, along with the highest value international related party transactions in the global value chain, will need to be carefully considered. This could effectively disclose commercially sensitive information.

This disclosure in effect publicises some of the data contained in country-by-country (CbC) reports of significant global entities⁴. Such additional public disclosure could lead to organisations considering whether to simplify their worldwide structures or rearrange their affairs.

4. 'Optional' elements rebadged as 'best practice' (for large businesses only)

As originally drafted, the TTC provided optional elements which could be adopted by large businesses.

The revised TTC will replace optional with best practice elements.

The reason for the recommended change is to encourage TTC adopters to enhance their disclosures (progressively if preferred) over time in line with best practice disclosures.

Deloitte comment

Organisations should consider the cost versus benefits to their businesses, both strategically and operationally, of comprehensively adopting the best practice elements over the short, medium and longer term and incorporating them into their broader tax transformation plans.

5. Best practice recommendations (for large businesses only)

These include:

⁴ This appears to be adopting, at least in part, calls for excerpts of companies' CbC reports to be made public (see for example the recommendation of the Senate Committee into Corporate Tax Avoidance, Senate Corporate Tax Avoidance Report, 30 May 2018).

- Information on material tax disputes with the ATO to the extent not already disclosed in the annual financial statements.
- Basic information regarding the structure and composition of the group and approach to tax structuring, such as the:
 - Name and place of incorporation of all group subsidiaries
 - Activities performed in low or no tax jurisdictions; and
 - Approach to allocating value between international related parties (for example, the arm's length principle).
- Details of the business' stance to cooperative compliance with the ATO and other tax authorities, for example, participation in Advanced Pricing Arrangements, Annual Compliance Arrangements or pre-lodgement compliance reviews and compliance with the ATO's justified trust program.

Deloitte comment

Disclosing an entity's ATO assurance levels or sign-offs on the whole or significant aspects of its business may assist in demonstrating a good tax record. However, the extent to which some of these matters are disclosed may impact business competitiveness.

The information provided here will potentially be closely reviewed by revenue authorities seeking to counteract potential base erosion, treaty shopping, tax avoidance and profit diversion behaviours or contrived, artificial and harmful tax practices of multinational groups.

As such, an exercise of 'getting the house in order' should be considered with respect to a group's global corporate and tax structures (if not already done). At a minimum, the commercial (including regulatory and financial) rationale for, and the economic substance of, entities operating in preferentially taxed jurisdictions, and the transactions they engage in, should be reviewed and documented. It is after all a chance for the business to tell the public its side of the story.

Labor Party tax policies

In addition to the Board's re-examination of transparency and tax disclosures, the Labor Party has announced numerous related policies in the lead up to the election, including the following:

- "Labor will support efforts to establish a stronger international agreement to require tax authorities to share information about individuals and corporations suspected of tax evasion or money laundering. Labor supports the growing global trend of requiring oil, gas and extractive industry companies to report publicly on a country-by-country basis on their revenue and profits as well as taxes and royalties paid, and the extension of such transparency measures across large multinational entities."⁵
- Labor will consider mandatory adoption of the TTC for all medium and large corporations operating in Australia, including subsidiaries of multinational corporations.⁶

⁵ Item 173, Chapter 2: A strong economy for all Australians, Labor's 48th National Platform

⁶ Economics Reference Committee, Final Report, May 2018, Recommendation 8

- “To ensure large Australian resources companies are good corporate citizens and maintain accounting and transparency systems that combat corruption, a Shorten Labor Government will legislate to require disclosure for payments arising from any activity involving exploration, prospection, discovery, development or extraction.”⁷
- “Improvements to the ATO corporate tax transparency data by adding additional data points that would likely be supported by business: 1) carried forward losses and other right-of-reply type data; and 2) a link to a company statement/explanation of tax practices or a mandatory tax transparency code report to replace the existing voluntary one.”⁸

In the event that the Labor Party wins the election and legislates its transparency proposals, the tax related obligations and expectations on business will continue to grow.

Conclusion

If the Board’s proposed changes to the TTC are adopted, this will step up the volume of quantitative and qualitative disclosures by affected businesses.

The Board envisages that this will increase the use of the TTC information for the purposes to which it is directed. The changes incorporate several of the ideas for improved transparency being debated presently in Australia’s political and public interest forums.

Taxpayers will be held to a greater level of accountability over their tax transparency data. Changes to financial reporting and governance systems may be required to facilitate the production of more reliable disclosures under the revised TTC. Businesses should familiarise themselves with the changes and stress-test whether their existing ‘natural’ systems and processes are capable of meeting the additional minimum standards and if desirable, the best practice standards.

It is notable that the Board is moving away from labelling the code as ‘voluntary’. This may be reflective of the practical reality that transparency and public scrutiny are here to stay and if anything, will only grow. Alternatively, it may reflect an implicit recognition that in time, the TTC will become mandatory. In the event Labor were to win the upcoming 2019 Federal Elections, this may occur in the near term.

As such, it is prudent for businesses to assess its current level of tax related disclosures and test whether this is likely to be appropriate. Business may decide to adopt the TTC, or adopt it more fully.

In a welcomed move to minimise duplication of effort and reporting, the revised TTC also provides flexible alternatives for how (i.e. in what form) the tax transparency disclosures can be made, including incorporating the TTC elements into financial statements, corporate social responsibility reports or a stand-alone tax paid report (whether directly or in combination with links to other publicly accessible information repositories). Published TTC data (in whatever form it takes) is to be made publicly accessible for at least 5 years after publication.

The Board encourages interested parties to provide views on its proposed changes to the TTC. Submissions can be made until 26 March 2019.

⁷ Refer speech, Hon Matt Thistlethwaite MP: Doing our bit to end the resource curse, Labor’s extractive industry transparency plan, 31 October 2017

⁸ Page 247, Labor’s 48th National Platform

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