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Tax insights

Your tax affairs in the public spotlight: Tax transparency

Snapshot

In recent years, pressure has been mounting for large corporates, particularly multinationals, to be more transparent about their tax affairs. The Organisation for Economic Co-operation and Development (OECD) is developing a number of initiatives as part of its 15 point action plan to combat “base erosion and profit shifting” (BEPS), including greater transparency. Further, Australia is continuing to develop transparency measures.

On 12 May 2015, the Treasurer announced that the Government is committed to greater transparency in commercial dealings of large multinationals to prevent tax avoidance through tax loopholes and profit shifting. In addition, the Government will work with business to develop a Voluntary Corporate Disclosure Code directed at greater public disclosure of tax information by large corporates.

A more pressing issue for large corporates is the enacted tax transparency measures, first expected to be published in late November or early December 2015. The transparency measures require the Commissioner of Taxation to report limited details about the tax affairs of corporate tax entities that have total income of $100 million or more in an income year.

Once the Commissioner’s report is published, large corporates can expect the media to examine its contents. They can also expect their tax affairs to come under scrutiny from a range of other stakeholders. Now is the time for Boards to plan how they will prepare for and respond to this increased scrutiny.

Overview of the tax transparency measures

The aim of the tax transparency measures is to improve transparency regarding the tax affairs of large corporate tax entities that operate in Australia. The measures have a number of objectives including:

- Discourage large corporate tax entities from engaging in aggressive tax avoidance practices.
- Provide more information to inform public debate about tax policy.

The transparency measures require the Commissioner to publish limited income tax information about corporate tax entities that generate total annual income of $100 million or more in an income year.[1]

The measures are not limited to multinationals.

Which entities do the transparency rules apply to?

The rules apply to “corporate tax entities” (Corporates). This includes the following entities:

- A company
- A corporate limited partnership
- A corporate unit trust
- A public trading trust

Leaving aside corporate unit trusts and public trading trusts, trusts are excluded from these rules even if their total income is $100 million or more in the relevant income years.

Do the transparency measures apply to private companies?

The measures apply to both public and private companies. Early in 2015, there was speculation in the media that the Coalition were looking to exempt approximately 700 Australian-owned private companies from the transparency measures. Such action would require a legislative change. To date, the Government has not made any formal announcement to exclude any private companies.

When do the rules apply from?

The transparency reporting rules apply to the 2013-14 and subsequent income years.

What information will the Commissioner publish?

The Commissioner is required to publish the following:

- Name
- ABN
- Total income for the income year
- Taxable income (if any) for the income year
- Tax payable (if any) for the income year.

What determines whether a Corporate is within these rules?

Any Corporate that generates total income of $100 million or more in an income year is within the transparency rules. The Commissioner will rely on the amount of total income disclosed at item 6(S) in an entity’s income tax return. For tax consolidated groups, only the head company’s details are published as only the head company lodges a tax return for the group.

The Government is committed to greater transparency in commercial dealings of large multinationals to prevent tax avoidance through tax loopholes and profit shifting.

[1] The Commissioner is also required to report the amount of any Minerals Resource Rent Tax that is payable by any entity (if any) in an income year, in addition to the amount of any Petroleum Resource Rent Tax payable by any entity in a financial year. The MRRT has since been repealed with effect from 1 October 2014 and therefore only information relating to the 2014 and 2015 MRRT years will be published.

What do those numbers mean?

Reporting is limited to three concepts - total income, taxable income and tax payable. This means that users of the report will necessarly have significant information gaps, and the data may be misleading or misinterpreted.

Tax losses are just one example. If a Corporate makes a tax loss for the income year, the quantum of that loss will not be published. Instead, the amount of the company's taxable income will be shown as zero (or nil).

ATO reporting

The ATO released a consultation paper in March 2015 on its proposed administrative arrangements for the transparency report. According to the consultation paper, the ATO intends to give entities an opportunity to confirm the accuracy of the information to be reported before the ATO actually reports it. The expected timing is as follows:

Timing	Steps
July 2015	Late balancing companies lodge returns
August 2015	ATO processes returns for late balancing companies
September 2015	ATO writes to entities. Entities ATO of inaccuracies.
October-November 2015	ATO processes responses from entities
November-December 2015	Report is finalised and published

One of the key objectives of the ATO's consultation is to get input from Corporates about how the information can be presented to address their concerns about the reported information possibly conveying a misleading impression of their tax affairs. As a starting point, the ATO website will provide general explanatory material to provide context for the published information to reduce the scope for it to be misinterpreted. For example, this material would discuss factors that may result in differences between a company's total (accounting) income and taxable income, and factors that might result in a company appearing to pay tax below the corporate tax rate.

Deloitte perspective

How to respond

Issues around corporate tax transparency, including BEPS related issues and the Senate Inquiry are prevalent in the media. Corporates that have an apparent low effective tax rate have become media targets. Transparency over tax affairs is becoming a progressively important dimension of corporate social responsibility.

What can corporates expect?

Corporates can expect the media to examine the Commissioner's report. They can also expect their tax affairs to be scrutinised by a range of stakeholders. Boards should be thinking now about how they will prepare and respond to this increased scrutiny.

Next steps

Issues for the Boards to consider:

1. What do the numbers to be reported in respect of the 2014 income year look like?
   - What story do those numbers tell?
   - How should the Board respond to any potential bad publicity?
2. What will the numbers in respect of the 2015 income year look like?
3. Governance:
   - Do the tax governance policies and practices reflect the current landscape?

Actions

Planning and preparation for transparency before the Commissioner publishes the tax information later in 2015 is critical.

- In recent years, a number of Corporates have published reports outlining their global tax contribution. The reports not only cover the income tax paid by the group each year, but also royalties, excise and other taxes, such as stamp duty and land tax. Such transparency reports are very comprehensive documents that often go far wider than disclosing a group's tax affairs; they also disclose the group's other economic and social contributions.

- An alternative to a large comprehensive report is smaller, more concise report or factsheet. Boards need to consider how their story is best told.
- To reduce the scope for the information reported by the Commissioner to be misinterpreted, the ATO not only intend to provide guidance material on its website, but has also indicated that it was prepared to refer to the relevant company websites. This requires consideration of what tax related information will be included on the company website.
- Consider preparing a media strategy ahead of the ATO publication – whether on a proactive or reactive basis. This could explain the group's governance policies, the group's approach to tax risk and tax compliance both in Australia and other jurisdictions. It could cover global tax contributions and it could explain any apparent anomalies in the information reported by the Commissioner.
- Consider whether tax related statements should be incorporated into the 2015 year-end process, including the annual report, results announcements, AGM etc.

Deloitte Tax Management Consulting works closely with client tax and finance teams to ensure organisations have a thorough understanding of their tax profile, and to develop effective communication of the tax facts.

What's on the horizon?

Voluntary Corporate Disclosure Code

Boards can expect to provide greater transparency in the future. The Treasurer recently announced a Voluntary Corporate Disclosure Code initiative as part of the 2015-16 Federal Budget measure. The Board of Taxation is to consider what information is to be disclosed and how it is disclosed.

The Government would like more companies, particularly large multinationals operating in Australia, to publically disclose their tax affairs. The Government believes that the voluntary code will highlight companies that are paying their fair share of tax and that it will also discourage companies from engaging in aggressive tax avoidance.

The Government will monitor progress and evaluate the results of the voluntary code process and consider further changes to the law if required.

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