



International Tax

Australia Tax Alert

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Tax transparency rules to take effect in 2015

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Tax transparency rules requiring the public disclosure of certain information relating to the tax affairs of large corporate entities in Australia were passed in 2013, and the Australian Taxation Office (ATO) is expected to publish the first tranche of company information on its website at the end of 2015. The rules, which are designed to discourage large corporate tax entities from engaging in aggressive tax avoidance practices, represent a paradigm shift from the long-standing position that taxpayer information is confidential (for prior coverage, see the tax alert [dated 4 April 2013](#)).

The tax transparency rules require the ATO to publish the company name, total income, taxable income and income tax payable for corporate tax entities for an income year whose total income for that year exceeds AUD 100 million. Corporate tax entities for these purposes include companies, certain trusts and limited partnerships.

The rules apply from the 2013-14 income year. For 30 June-balancing corporate tax entities, this means that the first year to which the rules may apply is the year ended 30 June 2014.

Tax transparency report details

The ATO envisions publishing a single annual report encompassing all relevant taxpayers. The precise form of the report has yet to be determined, but the ATO has stated the completed report will be published on its website. The ATO's current proposal is to present the report as a table, with corporate entities listed by name in alphabetical order. The proposed format would look as follows:

Name	Australian business number	Total income	Taxable income	Tax payable
Company X	xxxxx	AUD xx	AUD xx	AUD xx

The total income of a corporate tax entity refers to its gross income, as disclosed in the accounts (this amount also is used to determine whether the AUD 100 million threshold is exceeded).

If a corporate tax entity incurs a tax loss for the relevant income year, that tax loss will not be reported; in that case, the "Taxable income" field will be blank.

The ATO originally had anticipated reporting information covering the 2013-14 income year in September 2015, but this now is expected to be postponed to

November or December 2015. The deferral may be due to the ATO's desire to give entities an opportunity to confirm the accuracy of the information before it is reported. The ATO plans to notify all affected entities (expected to number around 2,300) of the details that it intends to report publicly. Entities will have three weeks to check the accuracy of that information and to notify the ATO of any inaccuracies. According to the consultation paper, the anticipated timetable for the publication of the report, while subject to change, currently is as follows:

Timing (2015)	Step
July	Latest-balancing companies file returns
August	ATO processes returns for late-balancing companies
September	ATO writes to entities, and entities notify ATO of any inaccuracies
October-November	ATO processes responses from entities
November-December	Tax transparency report is finalized and published

The ATO indicates it is aware of taxpayers' concerns that the reported information may convey a misleading impression of their tax affairs. Accordingly, the ATO proposes to include on its website general explanatory material that provides context for the published information, to reduce the scope of the reported information that could be misinterpreted. For example, this material would discuss factors that may result in a difference between a company's total (accounting) income and taxable income, and factors that might result in a company having a low effective tax rate. Specific factors that the ATO is proposing to discuss include the following:

- Timing differences;
- The receipt of income that is tax-exempt in Australia;
- The offset of prior-year losses against taxable income;
- Differences between tax and accounting treatment of income; and
- Permanent incentives provided for by the tax system (e.g. R&D offsets).

Despite the proposal, the only information to be publicly reported by the ATO will be total income, taxable income and income tax payable. This leaves a significant risk of misinterpretation of the information by the media and the public.

Comments

The tax transparency law originally was enacted by Australia's labor government. The current coalition government is under pressure by business groups to make significant amendments, given the potentially misleading nature of the information that will be made public. While the current government has echoed these concerns, it has not yet indicated that it will make sweeping changes to the transparency law. The only major change announced is a proposal to exempt about 700 Australian-owned private companies from the transparency reporting requirements, due to privacy concerns.

Accordingly, notwithstanding the guidance that the ATO proposes to provide on its website to provide context for the publicly reported information, corporate tax entities whose information will be published may wish to consider proactively making available further explanatory material to mitigate the risk of misinterpretation by the public and the media.

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