



10 April 2015

Evan Bitmead
New Measures and Government Relations
Public Groups and International
Australian Taxation Office
52 Goulburn St
Sydney NSW 2000

Via Email: ReportingEntityInfo@ato.gov.au

Dear Mr Bitmead,

ATO Consultation Paper
Tax Secrecy and Transparency: Administrative Arrangements for Reporting Entity Information

The Australian Financial Markets Association (AFMA) represents the interests of over 130 participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. Our members are the major providers of services to Australian businesses and retail investors who use the financial markets.

We welcome the opportunity to provide comments into the ATO's Discussion Paper "Tax secrecy and transparency: administrative arrangements for reporting entity information" (**the Discussion Paper**) dated 13 March 2015. As requested in the Discussion Paper, we have limited our comments to the administrative aspects of the proposal, that are to be discharged by the ATO, as opposed to policy matters. However, we note that we continue to engage with the Government as to the precise aspects of the proposed disclosure obligation, particularly around the disclosure of information that is considered to be commercial-in-confidence.

Our submission broadly follows the format of the Discussion Paper. Given the nature of the AFMA membership, we have limited our responses only to matters pertinent to the disclosure of income tax information for corporate tax entities, as opposed to disclosures with respect to the Minerals Resource Rent Tax or the Petroleum Resource Rent Tax.

Corporate tax entities

AFMA's membership includes inbound Approved Deposit-Taking Institutions (**ADIs**) that will generally operate their wholesale banking business in Australia through a permanent establishment as opposed to a locally incorporated subsidiary. The Discussion Paper, in articulating the corporate tax entities that will require disclosure, does not refer to permanent establishments. Accordingly, clarification is sought as to the ATO's view regarding the requirement to disclose information referable to such permanent establishments, and whether there are any differences in disclosure between such permanent establishments and Australian resident corporate tax entities.

A related issue arises insofar as such permanent establishments are not eligible to join an Australian tax consolidated group. Accordingly, where the group that contains the ADI also conducts other activities (such as broking) in Australia through locally incorporated subsidiaries and these subsidiaries form a tax consolidated group, there may be transactions that occur between the permanent establishment and the tax consolidated group. While these transactions may not have any economic effect, given they are between members of the same wholly-owned group, under the proposed disclosure model and the requirement to report total income as opposed to net income they will effectively be reported on a gross basis and hence inflate the disclosures for both the permanent establishment and the tax consolidated group. This would not occur within a tax consolidated group given the transactions would be eliminated on consolidation. This feature of transacting through a permanent establishment should be referenced, in our view, in the ATO's explanatory material.

Information to be reported

We note that the information to be reported by the ATO in relation to income tax is:

- Entity name and Australian Business Number;
- Total Income (as reported at Label 6S on the company tax return);
- Taxable Income; and
- Income Tax Payable.

One of our concerns from a policy perspective, as articulated to the Government, is that there is no disclosure of net accounting income. Hence, for businesses such as ADIs which are generally low margin, high volume, the disparity between the "total income" disclosure (which is gross) and the "taxable income" disclosure, which is net, will be greater than for other industries. This is a structural feature of the legislation requiring the ATO to disclose information and the ATO's guidance material should, in our view, highlight the lack of relationship between the total income disclosure and the taxable income disclosure.

We would be pleased to provide an appropriate example for inclusion in the guidance material if this would assist.

The Discussion Paper notes that, for an entity with a tax loss, the amount of the tax loss will not be reported, either on a current year or carried forward basis. We agree with this approach, insofar as such reporting may disclose prior year performance.

Cut-off date for reported information

In respect of the consultation questions set out in the Discussion Paper, we note the following:

- AFMA agrees that the report should be a final report and, to the extent possible, amendments subsequent to the publication date should be minimised; and
- Accordingly, we would advocate “Option 2”, i.e. the reporting of information contained in amendments requested but not processed by the cut-off date, to the extent that they are processed by the publication date.

We acknowledge that Option 2 imposes a significantly higher operational burden on the ATO and may stymie the ability of taxpayers to be able to confirm their information where it is the subject of a late amendment.

Confirmation of information

AFMA welcomes the proposal from the ATO to seek confirmation from the Public Officer of affected taxpayers as to the correctness of the disclosures and agrees with the proposed process as set out in the Discussion Paper. The Discussion Paper requests feedback on an appropriate timeframe for Public Officers to either confirm or contest the disclosures, and we would recommend 28 days.

Publication of the report

AFMA only has two comments in relation to the publication of the report and the associated comments in the Discussion Paper. Firstly, following on from the comments above regarding branches not being part of domestic tax consolidated groups and hence multiple disclosures, we would support disclosure of entities within the same economic group together in the report.

In terms of the guidance material, we agree with the broad topics to be covered and are happy to consult with the ATO to assist with the drafting of the particular headings, particularly those that pertain to the AFMA members. We would add the TOFA transitional adjustment (which may affect disclosures for the 2014 income year) and note that the guidance material should specify how the adjustments are reflected in the tax return, i.e. either as a deduction (R&D, OBU, etc) or a credit which reduces tax payable but not taxable income (franking credit, foreign tax credit, etc).

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Thank you for the opportunity to lodge a submission on the Discussion Paper. We are more than happy to discuss any aspect of our submission further or to assist the ATO in terms of the publication.

Yours sincerely,



Rob Colquhoun