PROPERTY COUNCIL of Australia

THE VOICE OF **LEADERSHIP**

11 March 2014

General Manager
Tax Systems Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: thirdpartyreporting@treasury.gov.au

Dear Sir,

Treasury Discussion Paper: Improving Tax Compliance – Enhanced Third Party Reporting, Pre-Filling and Data Matching

Thank you for the opportunity to comment on Treasury's "Improving Tax Compliance" Discussion Paper (the Discussion Paper).

The Property Council is the peak body representing the interests of owners and investors in Australia's $670 billion property investment industry. The Property Council represents members across all four quadrants of property investment, debt, equity, public and private.

The Discussion Paper sets out proposals to improve the level of tax compliance through third party reporting and data matching. This is intended to offer an enhanced pre-filling service to taxpayers and better address areas of risk to the revenue.

While the Property Council supports the objectives of the proposal, the industry is concerned to ensure the proposal does not escalate the level of compliance and administrative costs.

Specifically, unless amended, the proposals will lead to:

- the same information being unnecessarily collected by government agencies and businesses, duplicating time and costs;
- all unit trusts being drawn into the reporting regime and penalised by higher compliance costs;
- inadvertent and unfair discrimination against trusts compared to companies – the proposal is meant to apply to listed entities only but draws in unlisted trusts and not unlisted companies;
- industry being forced to provide historical purchase data that cannot be matched to particular sales because the trust does not know which units the taxpayer deems "sold" – this will defeat the purpose of data matching; and
- industry being unfairly and unrealistically forced to report historical data on unit purchases and distributions – retrospective application will bog down industry with thousands of data requests per year.

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These problems can be easily fixed by:

- restricting the obligation to report property sales to government agencies which avoids duplication;
- limiting the unit trust reporting regime to listed unit trusts which will level the playing field and ensure the proposal is in line with the policy intent; and
- ensuring the reporting regime only requires data to be reported for sale and redemption transactions which provides the best information for data matching at the lowest cost.

Below is a detailed analysis of these issues.

1. Sales of Real Property

Recommendation: industry supports the proposed approach to limit implementation to the States and Territories to avoid duplication of data collection.

Property sale information is currently collected by various government agencies including the Offices of State Revenue and Land Titles Office in each state and territory.

The Discussion Paper sets out a new reporting system for the sale of real estate property in Australia.

The Discussion Paper further proposes that reporting system will be electronic and involve only the States and Territories.

Limiting the reporting system to the States and Territories will ensure there is no duplication of time and effort across government and business (for example, the purchaser, vendor, real estate agents or those undertaking the conveyancing).

It will also minimise the administrative and compliance costs for industry.

There may be certain indirect costs, for example where the States and Territories need to change, update or otherwise amend forms to better collect the required data. However, we would expect these to be relatively small.

2. Sales of Units (scope)

Recommendation: introduce an appropriately targeted unit trust reporting regime that is limited to listed unit trusts which will level the playing field and ensure the proposal is in line with the policy intent.

The Discussion Paper does not clearly set out which unit trusts will be required to report the sale and redemption of units.

The proposal for companies is limited to *"transactions for shares in companies listed on a recognised stock exchange"* but notes that in future, *"private company"* shares could be brought within the reporting regime.

The Discussion Paper contemplates a similar, but separate, reporting regime for unit trusts.

Unit trusts are commonly used in Australia. There are three broad categories of unit trusts:

- listed unit trusts – where a unit trust is 'listed', or forms part of a listed stapled security;
- unlisted widely held unit trusts – some unit trust investments are offered to the general public. Although not 'listed', the investment is made by subscribing for new units and is

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realised through obtaining a redemption of those units. The issue and redemption is undertaken by the unit trust (as administered by the fund manager); and

- unlisted wholesale unit trusts – unit trusts are also used as a vehicle for wholesale collective investments (with access to this form of investment limited to large sophisticated / institutional investors) and in 'private' investment situations.

The design of the reporting obligations should recognise the different types of unit trusts to ensure the treatment of trusts is aligned with companies.

In particular, the rules should be restricted to listed unit trusts (or trusts that form part of a listed stapled security).

This will ensure there is a level playing field for all investment vehicles, and will not inadvertently draw all unit trusts into the regime.

3. Sales of Units

Recommendation: the reporting regime should only require data that is the subject of a current sale / redemption transaction. Unit trusts should not be required to report historical purchase information or prior distributions of non-assessable amounts.

The Discussion Paper sets out the types of data that the ATO would like to collect for each unit sale transaction.

However, the historical cost base and distribution information sought will not satisfy the ATO's data matching requirements and impose significant costs on business.

This is because the CGT regime requires a taxpayer who has acquired and sold securities in various parcels over time to specifically identify which parcel (and hence which cost base), is being sold or redeemed (the ATO view is published in Tax Determination TD33).

For example, over a period of 10 years, Taxpayer A may have acquired a total of 10,000 securities in the following parcels:

- 3,000 securities in Year 1;
- 2,000 securities in Year 4;
- 3,500 securities in Year 7; and
- 1,500 securities in Year 10.

The acquisition of each parcel is at a different cost, and the total amount of subsequent non-assessable distributions on each parcel is also different.

If in Year 12, the taxpayers sells 6,000 securities, the taxpayer is free to select which 6,000 out of the 10,000 has been sold (the choice is evidenced in the tax records required to be kept for CGT purposes).

If a unit trust was required to report cost / acquisition date / non-assessable distribution details, the unit trust would also need to make a choice (or have some form of set rule), to identify the parcels sold.

It is impossible to guarantee that the parcel information reported by the unit trust will match the CGT calculations made independently by the taxpayer.

This will completely defeat the purpose of data matching.

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In any event, solutions to fix the data matching will fail because the level of data that is being collected will swamp the data matching process.

Any requirement to report historical information will force the unit trust to:

- identify the time at which a particular unit was acquired; and
- determine the previous distribution amounts applicable to the unit sold.

The example above for Taxpayer A illustrates the complexity, but this is a relatively simple fact pattern.

As the number of parcels acquired and sold since 19 September 1985 (i.e. when the CGT rules came into effect), increases, the task of reconstructing a current starting position for this new reporting regime becomes exponentially more difficult.

Even if a set rule was introduced as part of the reporting regime (eg. first-in-first-out or last-in-first-out), it would require every current holding for every investor to be reconstructed.

This means that there will be examples where cost base and holding details would be required all the way back to 19 September 1985.

For example, if the unit was acquired in 1989, and the unit trust pays distributions on a quarterly basis, this could require more than 100 items of data to be collected (4 distributions per year x 25 years). This is difficult, expensive and unrealistic.

The cost imposed on unit trusts to undertake such a task would be significant and would hobble the ATO's data matching processes.

4. Sales of Listed Shares

Recommendation: the reporting regime should only require data that is the subject of a current sale / redemption transaction. Companies should not be required to report historical purchase information or prior distributions of non-assessable amounts.

The data matching concerns raised in 3 above apply equally to the reporting of sales of listed shares (and listed unit trusts including listed stapled trusts).

We look forward to discussing this further with you. Please contact Belinda Ngo (on 0400 356 140) or me if you have any queries or to set up a time to meet.

Yours sincerely,

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