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General Manager
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Dear Sir/Madam

Improving tax compliance - enhanced third party reporting, pre-filling and data matching

The Australian Bankers' Association (**ABA**) welcomes the opportunity to provide feedback on the Exposure Draft of the Tax and Superannuation Laws Amendment (2015 Measures No.5) Bill 2015: Third party reporting.

With the active participation of its members, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

Industry has worked closely with government since this initiative was first announced in November 2013. The work has now reached a position whereby the ABA is able make recommendations for the appropriate implementation of the policy to achieve its original objective in the most efficient manner and manage the significant costs of implementation which will be incurred across the financial industry.

The ABA has 6 recommendations:

- 1) An appropriately timed commencement of the obligation
- 2) The need for ATO final reporting specifications
- 3) Unknown frequency of reporting and associated costs
- 4) Timing of reporting, particularly of shares and units data
- 5) Government recognition of the existing regulatory burden and costs, and
- 6) ATO road map for individuals and small business.

1. An appropriately timed commencement of the obligation

The ABA notes the proposed law imposes obligations from 1 July 2016. Assuming a Bill is introduced during the spring sitting of Parliament, the earliest date of Royal Assent would be December 2015. Following this, the ATO would still need to issue final technical specifications before reporters would be in a position to commence their system design and implementation to accommodate the new law.



Throughout the previous Treasury consultations in 2013 and 2014, it was consistently communicated that reporters, both new and existing, will require a minimum of 18 months lead time to implement these legislative obligations from the date that the ATO finalise and publish all the required technical documents. Treasury also participated in the August 2015 consultations and consistently heard that same message, alongside a significant number of technical and practical policy questions raised by industry, particularly around the shares and units data, in both the listed and unlisted markets. The ATO will need sufficient time to work with industry to identify all the issues and reach a position, before publishing a final specification document. It is not commercial practice to design and implement system changes based on draft specifications.

The ABA recommends that sufficient time should be allowed following the release of any final reporting specifications and accompanying companion guide to allow organisations to implement any required changes to both IT systems and business operations. The ABA, again, recommends the reporting obligations should apply to transactions no earlier than 18 months after the date that the final specifications and companion guide are released by the ATO.

2. The need for ATO final reporting specifications

The ATO needs to provide documentation that outlines, in adequate detail, the ATO's policy and vision for the provision of data, by reporters to the ATO, and the subsequent use of that data by the ATO. This document would sit alongside the technical specifications so that all reporters can attempt to work this future vision into the architecture of their systems without incurring additional compliance costs to address subsequent changes in later years.

The ABA also seeks an ATO commitment to stability in reporting specifications. Each time specifications are updated, reporters incur technology, resource and business costs. Often a small change to reporting specifications results in significant costs to reporters. Equally, given the vast number of other government data initiatives underway, the alignment of this initiative to similar legislative data collection and reporting obligations such as FATCA, country-by-country reporting, Common Reporting Standard (CRS), AUSTRAC IFTI reporting, should be considered wherever possible.

Reporters with existing FATCA, CRS and country-by-country reporting obligations would be able to achieve significant efficiencies if the ATO were to work internally to align this third party reporting initiative with each of these other data reporting obligations. Alignment would likely result in a reduction in the regulatory cost burden. The ABA is happy to work with the ATO to achieve this efficiency.

3. Unknown frequency of reporting and associated costs

In addition to the timing of the commencement of this obligation, the frequency and speed of reporting required by the ATO causes significant concern across industry.

Section 396-55 is broadly drafted so that the Commissioner may specify by legislative instrument the frequency of the third party reporting (section 396-55(1)(a)(ii)). The ABA is concerned about the high compliance costs all reporters will incur if the Commissioner subsequently specifies a monthly or quarterly third party reporting requirement. Currently, some of the ABA members report transactions on payment systems on an annual basis. If the required third party reporting becomes quarterly, those members, and likely others, will incur costs in enhancing their payment systems to handle the quarterly reporting requirements. Additionally, all reporters will have to increase the level of business and technology resources to handle more frequent reporting. It is important that the legislation provides certainty to the industry that the annual reporting requirements will continue unchanged. Any changes to the frequency should be subject to consultation, regulatory impact analysis and the Parliamentary legislative process.



If section 396-55(1)(a)(ii) is to remain unchanged, the ABA recommends that the ATO right to select a more frequent reporting period must commence no earlier than 2020, and only after the Commissioner consults with the industry. This is to allow industry and the ATO time to embed the new reporting processes and iron out any data quality issues before dealing with more frequent reporting requirements.

4. Timing of reporting, particularly of shares and units data

Section 396-55 of the current draft law requires lodgment of the report within 31 days after the end of the reporting period to enable information to be used for pre-filing purposes. This is not currently possible. Reporters, new and existing, in both the listed and unlisted markets have provided Treasury and the ATO direct feedback on the significant number of technical and practical issues that make such a short deadline impossible.

Currently, reporting of investment earnings through the AIIR has a due date of 31 October, which impacts the ability of individuals to use this information for pre-fill. Some large reporters, where possible, do seek to submit reports early to support pre-fill functionality for their customers. However, for certain managed funds, where there is a chain of reporting, early submission is often not possible. Reporting data in shares and units (both listed and unlisted) is highly complex and resource intensive so an adequate timeframe to report is required.

The ABA recommends that the legislated lodgment dates for information relating to the sale of shares and units in unit trusts should be aligned to current AIIR reporting lodgment date of 31 October as per section 393-10.

The ATO clearly needs to address the fact that the 31 October date may not be achievable where reporters rely upon other institutions to provide data to facilitate their own reporting. Treasury and the ATO have recognised this as a legitimate concern and must provide certainty for the industry.

The ABA also notes that the Financial Services Council (**FSC**) submission details some concerns about the significant negative impacts the overlap of the proposed reporting of unit trusts will have with the proposed new tax system for managed investment trusts (**MITs**) which is set to amend the tax rules for eligible MITs. The new MIT rules will have an impact on the cost base of unit trusts, resulting in changes to the reporting proposed in the draft specifications in this consultation. Such re-work should be avoided from the outset. The ABA supports the position of the FSC regarding this issue, which is aligned with the ABA seeking an ATO commitment for stability in all reporting specifications.

5. Government recognition of the existing regulatory burden and costs

Treasury and the ATO have a duty to accommodate the fact that industry is already undertaking a number of substantial mandatory projects driven by Government. This includes, FATCA, CRS, AIIR, BPAY data acquisition, merchant data acquisition, AUSTRAC data acquisition, AUSTRAC IFTI reporting, AUSTRAC customer due diligence rules, country-by-country reporting, FOFA reforms, stronger super reforms, MySuper reporting, the New Payments Platform (**NPP**), the Reserve Bank review into interchange fees, the MITs reforms, Standard Business Reporting, Single Touch Payroll, Basel III, Basel IV, enhanced Pillar 3 disclosures and the Attorney-General's review of Australia's AML/CTF regime, to name a few currently in progress.

The NPP alone is an enormous billion dollar undertaking by industry. The project is scheduled for launch in 2017 and impacts every part of the business and technology eco systems surrounding all payment systems across each bank. Banks have just entered into the design and build stage of this project. Treasury must engage the ATO, industry and the Reserve Bank to understand the significance of this economy-wide project and work to address the implementation conflicts that will arise in regard to reporting of electronic payments. All payment technology expertise available in Australia is currently employed on these NPP projects.



Reporters, regardless of size, have a limited amount of resources to deal with so many competing projects. Treasury is best placed to assist industry and needs to address the growing costs government is imposing across the sector, particularly in a time when economic growth is slowing. It is the case that a reporters' technology resources are being re-directed to work on the above government initiatives whilst delaying other revenue generating and efficiency projects. This is resulting in significant opportunity costs to all reporters and the broader economy. While the focus on supporting small business is a legitimate policy objective, the costs incurred in implementing the vast number of diverse government driven initiatives comes at an economy-wide cost, ultimately borne by the end users.

The ABA recommends that Treasury use their overarching position to control the ever expanding list of government projects, regulatory burden and costs. This is in line with Treasury's stated program delivery role in supporting markets and business.

6. ATO road map for individuals and small business

The ABA would like to understand the ATO's future intent for both data capture and data pre-fill to tax payer income tax returns, particularly given variables/complexities in calculating a capital gain. Whilst the ATO's current intent is to alert taxpayers (via pre-fill) to the existence of a capital gain, the ABA requests confirmation that this intent will remain constant in future years. A deviation from this policy by the ATO will generate a significant additional cost burden on all reporters.

Whilst tax statements for managed funds include capital gains, these are often computed using a particular methodology (e.g. first in, first out/highest cost first out) with investors always being advised that they or their tax agents should make their own decisions regarding their capital gains tax position.

The ABA recommends that the ATO, alongside the technical documents, publish their communication plan that will detail the steps the ATO will undertake to ensure taxpayers and tax agents are aware that the intent of pre-fill is to alert taxpayers to the existence of a capital gain and not to match the pre-filled gross proceeds reported. Should this communication not occur, all reporters will experience an increase in customer complaints across the industry.

General comments on the draft legislation

In addition to our six recommendations around the commencement, clarity, frequency and costs, the ABA makes the following observations in relation to the Treasury consultation.

Mandatory data requirements

The reporting requirements should be as flexible as possible to give reporters the best chance of compliance.

The draft data specification released by the ATO indicate that certain data fields have a mandatory reporting requirement. Some of the information in the draft data specification is new information that reporters do not currently capture for reporting to any regulator. Any mandatory requirements should not require reporters to back-fill any data gaps as this would be a very costly and time intensive exercise. The final ATO documentation should specifically address this. Equally, mandatory reporting fields should be reserved for key data only and the requested data should be kept to a minimum.

Lodging with the ATO

Existing reporters have experienced a range of issues when lodging large files via the ATO business portal. There have also been issues with software updates and changes in the manner in which file notification and status reports are sent and received. The ATO should design, publish and implement a technical solution that allows reporters to quickly and efficiently engage with the ATO. Such a solution is also key to the ATO Smarter Data strategy, the ABA is happy to assist the ATO with this.



Strong banks – strong Australia

The ATO lodgment tool for the submission of reports should cater for large data files, user access management, consistency in software requirements and lodgment of files by a number of different individuals within one organisation or different entities within one banking group.

Addressing errors in reports

The ABA proposes that the enhanced third party reporting regime is adjusted to enable reporting entities to correct errors via the lodgment of revised reports within 28 days of identifying a material error within a report. This aligns with current provisions relating to errors in AHIR reports under Section 393-15.

The ABA proposes a limit to the non-shortfall penalties relating to the provision of false and misleading information to the ATO, this would ensure that there is no disparity in treatment of large reporters.

Sales of shares and units

The ABA members have shared with Treasury and the ATO significant concerns relating to the complexities in reporting share and unit data, particularly when held under a nominee/trustee/custodian relationship where the upstream counterparties (i.e. custodians, brokers) are not aware that transactions are undertaken on behalf of underlying beneficial owners. The ABA understands that the FSC submission will cover this and other issues in detail, given similar concerns from wrap platform providers.

In all cases, materiality and the benefit achieved by the ATO for a particular data acquisition should be considered in light of the cost incurred by a reporter.

The ATO must reach a final position and address a significant number of technical and policy issues raised by industry before publishing the final specifications which the industry will use to build their systems. Treasury must give the ATO adequate time to complete the above process, and then the reporting obligations should start no earlier than 18 months after the date that the final specifications and companion guide are released by the ATO.

Scope of legislation

The draft legislation is broadly drafted and could reasonably be interpreted to cover a much broader range of situations. The draft legislation provides for some exceptions, which can either be executed by legislative instrument or on a case by case basis, both at the discretion of the Commissioner. How these exceptions will apply is unclear.

Legislative clarity is required to remove uncertainty regarding the application of the proposed legislation and provide a clear pathway forward enabling the ATO and reporters to commence their projects to comply with the final law. Clarity could be achieved by including a series of specific exclusions in Subdivision 396-B to align with the stated policy intent of simplifying tax return processes for individuals. The current exemptions which require the Commissioner to execute his power could be retained for other cases.

Recommendations for exclusions are:

- 1) Entities reporting on transactions other than a transaction involving individuals, family trusts and small businesses (as defined by section 328.110 in ITAA 1997). This is directly in line with the stated policy intent and feedback provided by the ATO during the August 2015 meetings that reporting is targeted only at retail investors.
- 2) A security trust holding the underlying asset as collateral where the beneficiary has absolute entitlement to the asset (e.g. Division 235 instalment trusts). This will align reporting requirements for instalment trusts with the requirements in Subdivision 393.
- 3) Reporting entities that are interposed through a chain of reporting entities to the extent that:



- i) it is an interposed entity between the transacting participant and another entity with a reporting obligation under this division;
- ii) the interposed entity provides the name and identification information of the transacting participant to the other entity; and
- iii) the other entity will report the transaction with the details of the transacting participant and not the intermediate entity.

This will ensure that only one investment entity in a chain of entities will report and will avoid duplication of un-reconcilable data which will provide challenges for the pre-fill objective. This issue is particularly relevant for Investor Directed Portfolio Service platforms.

Timing of reporting

As per Recommendation 4 - Timing of reporting, particularly of shares and units data - the ABA recommends that information relating to the sale of shares and units be reported four months after the end of the financial year, which aligns with the AIIR as per Section 393-10.

Electronic payments and merchant data

The draft legislation as it relates to electronic payments is also very broadly drafted. Legislative clarity is required before reporters can commence projects to address the reporting requirements. Here again, clarity could be further achieved by including a series of specific exclusions in Subdivision 396-B to align with the stated policy intent of simplifying tax return processes for individuals. The current exemptions which require the Commissioner to execute his power could be retained for other cases.

Recommendations for exclusions are:

- 1) Transactions of financial services entities involving wholesale payment arrangements. In this instance, the wholesale counterparty would report rather than the primary financial services entity, avoiding information duplication.
- 2) Other forms of electronic payment that are not primarily related to sale transactions should be excluded under the legislation as the ATO has stated during the August 2015 consultations that they do not intend to capture all transactions relating to a business account.

The draft legislation specifies that third-party reporting of electronic payments is required only for transactions “on behalf of an entity carrying on a business”. This can be problematic as there are some situations where reporters cannot distinguish which customers “carry on a business”. An example is an electronic payment made by a residential tenant to a real estate agent on behalf of a mum-and-dad property investor. While the bank facility is operated by the real estate agent, the payment is collected for the property investor. Generally, the mum-and-dad property investor does not carry on a business of property investment and the electronic payment of rent is not business income. If the reporter provides the ATO with details of the transaction which is beyond what is required by law, the reporter may breach the privacy legislation. The ABA recommend that the draft legislation be modified in this regard.

The ABA members support one format of reporting for a particular provider across all systems BPAY, NPP, PayPal, credit card, debit card etc. This is so that only one report format needs to be developed and if there are subsequent changes required, then only one report needs to be modified. The draft record structures seem to be consistent with the idea that if the frequency of lodging is increased the same report format can be utilised. The ABA would like this to be the case so that the impact on any future change is minimised.

The ABA notes that there is no need to provide GST data in the report and agrees with this approach, additionally that the issue of “cash out” facilities has been addressed. ATO guidance will need to be developed in respect of the conversion of foreign currency transactions into Australian dollars which is the specified currency for reporting.



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In many instances ABA members operate a multi brand strategy, each brand with their own legacy IT systems. It would be desirable for there to be the flexibility for a particular banking group to lodge different reports that correspond with their different systems.

In all cases, materiality and the benefit achieved by the ATO for a particular data acquisition should be considered in light of the cost incurred by a reporter (i.e. BPAY biller data).

Mandatory data requirements

The current draft specification contains several mandatory fields where customer data may not be held. For example, instances where the ABN may not have been required to be captured at the time of customer on-boarding for long standing customers. The ABA seeks confirmation from Treasury and the ATO that where data is not currently held in the reporter merchant facility system, the reporter should not be required to obtain this data from customers or obtain from other banking systems in order to populate the report.

Frequency and timing of electronic payments and merchant data reporting

As per Recommendation 3 - Unknown frequency of reporting and associated costs, the ABA recommends that information relating to electronic payments and merchant data be reported annually within four months of the end of the financial year to align with the AIIR as per Section 393-10.

ABA thank you for the opportunity to contribute to the Exposure Draft. The ABA remain committed to continuing our work with Treasury and the ATO on this topic and is happy to engage on any of the matters raised above.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Aidan O'Shaughnessy', written in a cursive style.

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