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Mr Gerry Antioch
General Manager
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Langton Crescent
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By Email: taxtransparency@treasury.gov.au

Dear Mr Antioch

Improving the transparency of Australia's business tax system – Discussion Paper

Ernst & Young appreciates the opportunity to provide comments on the Discussion Paper titled "Improving the transparency of Australia's business tax system" (the "Paper").

In this submission we provide our views primarily on the proposal for public disclosure of the income taxes and resource taxes paid by large and multinational businesses (covered in section 2 of the Paper) ("tax public reporting"). We also provide some comments in respect of the other initiatives in the Paper.

From our discussions with a broad range of corporate groups it is apparent that there are mixed views in the business community on the large business tax public reporting proposal. Some public companies accept the concept of greater company tax public reporting, with other public and non-public reporting companies being strongly opposed to the potential disclosure of commercially sensitive information.

However, there is a universal concern that the government's proposal for an ATO publication covering a large number of corporate groups, reporting publicly their cash tax and resources taxes paid in relation to one year only, with limited explanations of their facts and circumstances has real potential to mislead readers. It therefore has the potential to unfairly tarnish the reputation of Australian businesses in the eyes of the public, even if those entities have good standing and relationships with the Australian Tax Office ("ATO") and other countries' revenue authorities.

Whilst those concerns might be mitigated by reducing the scope of the disclosure, by appropriate presentation by the ATO publication and various safeguards that may alleviate such concerns, such as those we outline below, it is clear that these will generally impose a new reporting and public disclosure burden on many corporate groups impacted by the proposals. Thus we suggest it is misleading to state that the proposal is "thereby ensuring that no additional compliance costs are placed on taxpayers."

We question, therefore, whether the perceived benefits of the proposal in the claimed increased public awareness of the role of business and tax policy, sufficiently outweigh the likely not-insignificant associated costs and unintended detrimental impacts. Hence, we submit that the government's proposal should be reconsidered.

If the government decides to proceed with this proposal, despite our reservations, we recommend that:

a. the disclosures proposed should not include the 'gross revenue' or income of the company; and

b. the government initiate a limited pilot of a modified company tax public disclosure transparency proposal, focused on extremely large business only. This would allow for a proper impact analysis and the development of appropriate safeguards before the proposal is applied to a much larger part of the business community.

Our specific comments on the corporate tax transparency proposal are set out below.

1. Ernst & Young supports modernisation of the international tax rules

At the outset, we make it clear that Ernst & Young supports the international efforts to identify precisely the features of the global tax rules dealing with international business which need adjustment and modernisation – a key element of the OECD base erosion and profit shifting ("BEPS") paper of February 2013 ("the OECD February paper"[1]). As the Secretary General of the OECD Mr Angel Gurria stated in the OECD April report[2] to the G20 Finance Ministers on 19 April "The OECD's work on Base Erosion and Profit Shifting (BEPS) aims to bring the international tax rules into the 21st century."

We support, further, the Australian government instruction to Treasury to produce a consultation paper to take input to guide Australia's response. We support Australia's involvement in multilateral action through the OECD, G20 and G8 to identify and address the challenges with the international income tax system.

2. Ernst & Young supports enhanced transparency between revenue agencies

Ernst & Young also supports initiatives to enhance transparency in the sense of exchange of information between tax revenue authorities and government agencies and access to information by revenue agencies. The ATO has been a long-running leader in the Forum for Tax Administration ("FTA") in promoting information exchange. The Australian government has been an international leader in the Exchange of Information ("EOI") initiative. This is a key element of the OECD BEPS initiative.

We therefore support the proposal for enhanced information sharing between government agencies as outlined in section 4 of the Paper. We would be pleased to provide further feedback when more details are released on those proposals.

Continuing and enhancing such initiatives, should be Australia's focus in order to more effectively address global base erosion and profit shifting.

3. OECD is not championing the public disclosure of businesses' tax information

The OECD February paper highlights the need for increased transparency on effective tax rates of multinational enterprises, but there is no specific recommendation for public disclosure of data from taxpayer returns. Instead, the focus is on businesses' tax transparency to revenue authorities; revenue authorities' exchange of information and the need for better analysis of statistics to drive tax policy analysis and statistics and tax administrations enhanced engagement with large business: these are appropriate transparency considerations and some of these are considered further in this submission.

[1] http://www.oecd.org/tax/beps.htm

[2] https://proview.thomsonreuters.com/library.html?language=en

We note that in relation to those recent reports and also the Forum's review of 96 jurisdictions to date, including Australia, the Forum has not cited the lack of company tax public disclosures as a deficiencies in the tax systems, nor has company tax public disclosure been listed as a recommended correction or action.

4. Australia as a small open economy should promote multilateral initiatives through the OECD as do the United Kingdom and New Zealand

We are particularly concerned that Australia's early movement in relation to company tax public disclosure, with an express focus on large foreign companies, which has only been implemented by one other country (Denmark from 1 July 2012), may tend to disadvantage Australia in its attempts to encourage foreign businesses to undertake or expand investments in Australia, when no other competing countries in the Asia Pacific region have made similar announcements. This proposal results in significant business reputation risks discussed below and appears to unnecessarily increase the sovereign risk profile of Australia for foreign investors, which would not be the case if Australia was merely implementing a multinational initiative.

In New Zealand, on 18 April 2013, Peter Dunne, Minister of Revenue when releasing an officials' report on work to address the issue of taxing large multinationals and BEPS, stated that[3]

> "Transparency of the New Zealand tax affairs of multi-nationals doing business here is also an issue worth considering. Australia has proposed that the Australian tax affairs of large multi-nationals should be made public in a simplified way. Such a move, in itself, is not a complete solution as there are many factors to consider. **Taxes paid may be high or low in comparison to turnover for any number of reasons, but I have tax officials monitoring the Australian proposals very closely. The New Zealand "wait and see" approach has merit, as the effects of public tax disclosures are not clear, and Australia would be wise to exercise similar caution.** (emphases added)

Even the UK Business Secretary Vince Cable is quoted in a recent newspaper article[4] noting that

> "There is mounting concern about where tax is actually paid," Mr Cable said.
> "The danger at the moment is that this just spills over into a **generalised anti-business, anti-multinational sentiment which is unhelpful because we do want successful businesses, we do want inward investment. We don't want people to be stigmatised on the basis of ad hoc little bits of research.**" (emphases added)

We submit that it is premature for Australia as a small open economy to engage in this public disclosure proposal unless and until public disclosure of corporate tax is identified by a majority of the G20, G8, OECD stakeholders or countries in the Asia Pacific region, then and it represents a distraction from the much bigger task of adjusting the system for taxation of international business.

We are concerned, as was noted implicitly in both of the extracts above, about the risk of this public disclosure of taxes being used by some parties to create "name and shame" campaigns and unfairly and inappropriately attacking the reputation of legitimate businesses complying with Australia's tax laws and indeed having good relationships with the ATO.

[3] http://taxpolicy.ird.govt.nz/news/2013-04-18-update-beps-work

[4] http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9920017/Vince-Cable-will-back-tax-revolution.html

For this reason we are concerned about adding features to our tax system which might, given the other challenges currently of operating or building businesses in Australia, cause potential investors to deprioritise Australia as an investment location. Tony Shepherd, President of the Business Council of Australia in a recent speech to the National Press Club, noted that the World Economic Forum has just ranked Australia's tax system 103 out of 144 countries in terms of its impact on incentives to work and invest. Whilst those comments were primarily directed at the need to reduce the number of taxes and rebalance the mix of taxes, those statistics will not be improved by imposing a significant, unnecessary tax public reporting burden on Australian business.

We note also comments by a US Treasury officer speaking at a conference on 18 April[5]:

> "The U.S. is very supportive of these efforts," said Danielle Rolfes, Treasury's international tax counsel, speaking about the OECD base erosion and profit-shifting project ...
> . "Moralizing about base erosion and profit shifting is not helpful," she said. The ordinary tax planning that multinationals engage in is "perfectly legal," Rolfes said, so it is up to governments to fix their laws."

5. Public tax disclosure proposal is not consistent with the stated policy objectives

The paper states that "the object of this proposal is to enable the public to better understand the corporate tax system and engage in tax policy debates, as well as to discourage aggressive tax minimisation practices by large corporate entities".

The Treasury Discussion paper includes the comments by the Assistant Treasurer that "... This will encourage enterprises to pay their fair share of tax and discourage aggressive tax minimisation practices."

For the reasons discussed below, we do not believe the current proposals, which appear to have been adopted by only one other country namely Denmark, and which in fact go beyond the proposals adopting Denmark, serve the public policy debate, and nor do they improve the process for achievement of the reforms by multilateral forums.

As we identify below we submit that:

- The proposed disclosures will not affect global organisations which do not have a taxable presence and tax filing obligation in Australia.
- The proposed disclosures will blur and conflate the distinction between the activities of and operations of Australian based domestic companies, Australian based multinational enterprises and Australian subsidiaries of global multinational enterprises, thus adding nothing to the tax policy debate.
- The proposed disclosures raise real concerns that companies will be unfairly attacked because of many members of the public and campaigners misunderstanding the combination of total income plus taxable income plus tax payable.
- The proposed disclosures will potentially be seen adversely in relation to any Australian multinational organisation and all the more so Australian exporters which might have difficult international trading conditions causing reduced levels of taxable income or indeed no taxable income.

[5] Source – Tax Notes Today, an electronic publication by Tax Analysts, Inc. News Analysis: Offshored Intangibles and the OECD Base Erosion Project See 2013 TNT 76-1

6. Disclosure proposal does not address ATO stewardship of tax system

In our view the proposal will not achieve the objective of properly informing public debate. We reiterate our concern about name and shame reputational risk – as put by UK Secretary Vince Cable "because we do want successful businesses, we do want inward investment. We don't want people to be stigmatised on the basis of ad hoc little bits of research".

The proposed disclosures will be misleading given the ATO's view of the market represented by the relevant entities.

For example, in a recent speech delivered by Mark Konza, Deputy Commissioner, Large Business and International, included an assessment of the current ATO view of the large market, he stated that[6]:

> "approximately 800 (representing 55% of company tax) [large companies] we have no current concerns about. This is what self assessment is about: concentrating the Commissioner's limited resources on the higher risk matters and conserving the resources of lower risk taxpayers for use in their business".

He also provided details of current and proposed ATO large business sector initiatives, namely, implementing pre-lodgment compliance reviews (PCRs) and the pilot of the reportable tax position (RTP) schedule with nominated large taxpayers.

Many of the taxpayers potentially to be reported have in fact transfer pricing Advance Pricing Agreements, tax Advance Compliance Arrangements, and other mechanisms which give the ATO full visibility of their affairs.

7. Disclosure would be misleading in relation to e-commerce activities

We note also the comments of the Commissioner and Assistant Treasurer to the Senate Estimates briefing – October 2012[7] released under FOI:

> "The issue of major e-commerce businesses earning significant profits, but paying relatively low tax globally, has again recently been prominent in the Australian and international press.
> .. It is only when Australia has a taxing right that transfer pricing provisions come into play.
> ... The ATO has 'risk reviewed' several of these structures over the years. The tax outcomes in these entities were found to be 'commercially realistic' in light of the current law and policy settings."

As Treasury and the government will be aware the taxation of e-commerce activities was extensively reviewed by the Australian Treasury and ATO almost 16 years ago in which analysis all of the known issues were identified. We reference in particular the:

- ATO 1997 report, Tax and the Internet and the
- ATO summary of its revised thinking in Tax and the Internet: Second Report - December 1999.

We recognise that the delays in taking policy action might be outside the control of the Australian government and Treasury and ATO. But it would in our view be problematical to have the reporting proposal without providing the context as to how and why relevant companies are acting within the law.

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[6] http://www.ato.gov.au/corporate/content.aspx?doc=/content/00349373.htm
[7] available from http://www.cch.com.au/au/News/ShowNews.aspx?PageTitle=Commissioner's-October-2012-Senate-estimates-briefing-paper&ID=39259&Type=F

8. Proposal will not advance policy debate about global companies with no taxable presence in Australia

The public tax reporting proposal will only cover companies (in relation to the applicable threshold) that have, prima facie, met their income tax compliance obligations and have lodged Australian income tax returns upon which the ATO's publication will be based (i.e. "known knowns").

The proposal will not identify businesses that fall outside the Australian tax net, such as a foreign business with some economic connection with Australia but no income tax or withholding tax liabilities. For example it will not cover:

- a foreign large retailer making significant retail sales to Australian consumers through the internet or mail order catalogues
- a large foreign substantial equipment manufacturer, with a considerable marketing presence in Australia, but no taxable transactions in Australia
- a foreign software provider selling software electronically with no taxable Australian presence

As a result we question the value of the proposed disclosure regime where it fails to identify the problems of lack of taxable presence in Australia of global companies.

9. Enrich the publication of ATO statistics and further tax research

The public disclosure of very simple tax data for a large company (whether as announced or as modified in this submission) will not meaningfully and reliably advance the public debate on whether that taxpayer is paying its fair share of income tax.

What is required is detailed data, analysis and evaluation against a wide range of criteria. We note that the ATO does already produce an extensive amount of statistical analysis on corporate income tax which is currently available to the public from its website[8]. These include:

Table 1: **Selected items, by net tax and company type, 2009-10 income year**
This table shows the number of records and amounts for selected items such as total income, taxable income, total credits/rebates, total refundable credits, net tax and net capital gains for public, private, other and total companies, broken down by net tax groupings.

Table 2: **Selected items, by taxable income, taxable status, residential status and company type, 2009-10 income year**
This table shows the number of records and amounts for items from the company tax return for taxable and non-taxable companies that are classified by different types (resident, non-resident, public, private and other), broken down by taxable income groupings.
To meet privacy regulations, statistics for some items may not be included in the tables

The statistics are currently not presented to facilitate public tax policy debates. As well we believe that they do not collect or present all statistics relevant to the policy debate. But they cover many statistics such as the totals for almost every item in the Form C, and classified in many cases by different taxpayer strata. They certainly contain more information than the public tax disclosure proposal will cover.

[8] http://www.ato.gov.au/corporate/content.aspx?menuid=0&doc=/content/00305922.htm&page=9&H9 -for "Taxation statistics 2009-10"

We submit that there could be greater analysis of the ATO statistics and greater disclosures of some existing ATO analysis that is undertaken, but not currently publicised.

In particular:

- The ATO has, as part of the ATO risk differentiation framework and the determination of "risk ratings" that are provided to companies in the Large Business and International sector, sophisticated analytical tools for the determination of that risk rating, taking into account a particular taxpayer characteristics assessed against comparable corporate tax data.

- The ATO has had much information about international dealings disclosed in Schedule 25A disclosures and International Dealings Schedules lodged by corporate tax entities.

Potential public disclosure of some of that comparative data would be much more useful for public debate about appropriate policy settings than the proposed public disclosures.

The OECD February paper cites various studies on effective tax rates of multinational enterprises, studies using data from taxpayer returns, and other analysis of profit shifting, noting that further studies and reviews relating to BEPS are required to better identify the nature and extent of BEPS, which would benefit from recent improvements to tax transparency.

We suggest that Australia could lead in the stronger analysis of its own publicly available tax statistics to enhance public awareness of key issues.

Consideration should also be given as to whether there is any scope for the government's proposed Tax Studies Institute to undertake fuller analysis and reporting of large and multinational company statistics and related policy issues.

In our view this is a far more productive action to enrich the quality of tax policy debate than the public tax disclosure proposals under discussion.

10. Exclusion for non-reporting proprietary companies

If the government decides to implement this proposal, it must recognise that there are exempt proprietary companies which are exempt from filing financial statements.

If the government were to proceed with public disclosure of taxes payable then there are some private companies whose turnover exceeds the threshold, which will be potentially subject to public reporting of their total income, taxable income and taxes payable – potentially commercially sensitive information.

As you will be aware the public disclosure of private groups' financial data in other countries led to criminal extortion and worse crimes against the groups, which has caused countries such as Japan to terminate reporting of this nature.

We recommend that non-public reporting disclosed entities should be excluded from the proposed ATO public reporting.

11. $100 million proposed threshold is too low

If the government decides to implement this proposal, the proposed $100 million threshold, will extend beyond the ATO's large business and international segment (which currently covers entities with turnover exceeding $250 million), and will straddle the ATO's Small Medium Enterprise segment, resulting in potential split responsibilities. As noted above, there would be merit in at least aligning the threshold so that all disclosed entities are subject to consistent ATO compliance approaches and strategies.

12. ATO should not produce a single electronic or paper publication or list or table

If the government decides to implement this proposal, we are concerned that the ATO publication must not be in the form of a list of all disclosed entities (or be capable of being converted into a list) for a range of reasons including:

- members of the public may misconstrue, or the media could mislabel, any ATO company listed in an ATO tax transparency list with an apparent low taxable income as a percentage of gross reported revenue, or apparent tax payable of less than 30% of the taxable income, as a "name and shame file". Simply being included in such a list may tarnish corporate groups, notwithstanding that they may be recognised as responsible taxpayers with the ATO and other revenue authorities;

- disclosed entities will come from a wide range of different industries, with differing income/profit and tax profiles, which will not be comparable. Whilst we have some concerns whether particular disclosure items (total income, taxable income and tax payable) may be potentially misleading for entities on a stand-alone basis (please refer to our separate comments below).

The problems are magnified if those amounts are disclosed alongside a long list of entities where the data is not comparable.

We understand that the Danish system for public disclosure of company tax information has the information available on the Danish revenue authority's website only, and only allows public access on individual entities, one at a time, based on the user entering the name or ABN-equivalent for the entity. There is no list and no table and no capacity to search or create lists. Any ATO publication should provide similar safeguards.

13. Total income should not be disclosed as its disclosure will be misleading

If the government decides to implement this proposal, there should be no public disclosure of business' total income. Total income or turnover should only be used as a threshold to determine which companies are subject to the proposed ATO reporting.

The meaning of "total income" is not clear from the Paper. It appears to refer to total income based on the company income tax return Form C item 6, label S page 3 - a gross income concept. This includes:

- Gross payments where ABN not quoted
- Gross distribution from trusts
- Total dividends
- Fringe benefit employee contributions
- Unrealised gains on revaluation of assets to fair value
- Assessable government industry payments

- Income from financial arrangements (TOFA)

The comparison of this total income which might be publicly disclosed alongside “taxable income” - a net income concept, will be problematic. Total income as a disclosure item is particularly susceptible to misinterpretation, particularly if that figure is used as a basis for comparing results of different companies with fundamentally different characteristics. For example:

- a services company there might have a high ratio of taxable income to total revenues
- a trading business that typically operates on relatively small margins there will be a considerable discrepancy between total income and taxable income
- a company experiencing difficult trading conditions in the current environment from the strong dollar “sledgehammer” referred to by Treasurer Wayne Swan. Such a company might have a great discrepancy between gross revenue and taxable income, as the company will have reduced or minimal or not taxable income. An exporter with reduced revenues and taxable income will run significant risks of being misperceived as a tax avoider avoiding taxes by transfer pricing or based erosion activities
- for an investment company deriving passive income such as income, rent or dividends, there may be a relatively smaller differential between total income and taxable income.

The many different facts and circumstances mean that a cursory reader of total income and tax payable will misperceive the effective tax rate of the trading taxpayer in the above scenarios. This could be misunderstood by the casual reader or activist to imply that the trading taxpayer is in some way a tax avoider to be distrusted or attacked. To have information relating to turnover and taxable income reported without any further information being available invites potential reputational damage.

At minimum, the total income disclosed should be based on no more than “total profit or loss” disclosed in the company income tax return Form C item 6, label T page 4 (a net income concept). But even then the following issues arise:

- Carry forward losses - reporting either formulation of total income does not properly reflect the effect of carry forward tax losses. Coming out of the global financial crisis many Australian enterprises whether Australian-owned or foreign-owned have been going through very challenging times and there would be inappropriate recognition of carry forward tax losses under the proposals covered in the paper.

- Foreign income - Foreign entities (with foreign income not subject to Australian income tax) and also Australian entities with significant foreign operations (with exempt foreign dividend income subject to foreign income tax) may be unfairly tarnished in relation to any difference that may arise between total income and taxable income arising from such non-taxable foreign income. That is, an Australian company with a US or UK fully taxable subsidiary and receiving dividends from that subsidiary might have an apparent low taxable income compared with the top line total income but that is not indicative of any tax avoidance or inappropriate structuring. We submit that there should be a mechanism that excludes such amounts from total income.

- Franked dividends - Companies that derive significant income in the form of franked dividends may also be subject to potentially confusing disclosures, due to distortions resulting from the operation of the imputation system, whereby imputation credits are required to be included in taxable income, but would not be included in the company’s reported income in its financial reports. One approach would be to exclude franked dividend income from total income and excluding franked dividend income plus imputation credits from total income.

- Businesses experiencing difficult trading conditions – As mentioned above, for a company experiencing difficult trading conditions in the current environment from the strong dollar "sledgehammer" referred to by Treasurer Wayne Swan the discrepancy between gross revenue and taxable income might be great, as the company will have reduced or minimal or not taxable income. An exporter with reduced revenues and taxable income will run significant risks of being misperceived as a tax avoider.

- Businesses with large capital expenditure and legitimate capital allowance deductions will also be exposed to reputational damage unfairly because their capital allowances cause them to be seen somehow as tax avoiders.

An illustration of this has arisen in the UK just in the last few days where a foreign owned utility company has been the subject of a campaign by a campaigning organisation on account of its allegedly low taxes paid[9]:

> "Around 80,000 people have called on (it) to "stop tax dodging", signing up to an online petition within 24 hours of its launch by campaign group ...
> But the energy company defended its practices, saying they were perfectly normal ...
> "We do borrow from our parent company ... this is because the interest rates we pay ... are the same as, or often lower, than we would pay to a UK bank. This is not only perfectly legal, and something HMRC [the UK tax authorities] is fully aware of – it is common practice."
> ... since 2008, (it) had invested around £5bn in the UK, including the construction of two new gas-fired power stations and wind farms. It added: "We've not paid corporation tax because we've been investing hundreds of millions to keep the UK's lights on.""

We are concerned about the onset of similar campaigns based on extreme language and soundbites arising from this proposal, by persons without context and without proper understanding, of facts. Whilst we are not suggesting that the Danish system for public disclosure of company tax information should be adopted, we note that the Danish system only allows public access to taxable income data (to identify tax payable). There is no gross income or net accounting income disclosed.

We therefore recommend that total income (whether this is based on a gross or net income approach) should not be a public disclosure item, due to the many problems identified above.

14. Tax payable disclosure needs to be properly selected

If the government decides to implement this proposal, the disclosure of "income tax payable" should be based on Gross tax as disclosed in label B, page 10 of the company income tax return (which is broadly, taxable income multiplied by the company tax rate). Such a disclosure will not take into account tax offsets such as R&D tax offsets and franking credits, which would otherwise reduce income tax payable.

This is necessary to protect the reputation of companies that:

- derive significant income in the form of franked dividends, particularly if any distortions in relation to the reporting of total income and taxable income, noted above, are not suitably addressed However, if franked dividend income is excluded from total income and franked dividend income plus imputation credits are excluded from taxable income, then any disclosure of income tax payable should disregard any imputation credit tax offsets.

[9] http://www.guardian.co.uk/business/2013/apr/18/npower-faces-anger-tax-petition

- derive taxable foreign income that was subject to foreign tax, that results in foreign income tax offsets that reduce their overall income tax payable
- undertake significant levels of research and development which qualifies for the recently introduced R&D tax incentives.

A growing number of Australian businesses are experiencing challenging business conditions, due to various factors including a high Australian dollar. Where affected companies have experienced falling revenues and/or falling profits, resulting in falling income tax payable, there is a concern that any proposed ATO publication, will not provide the public with a balanced perspective of non-tax related factors that should be taken into account when evaluating the position of such companies.

It is critical that the public disclosure of income tax payable is not based on label S, page 10 (where gross tax is reduced by tax offsets, income tax instalments and any tax withheld from the company). Otherwise, such a disclosure of income tax payable will be very misleading and may unfairly prejudice conservative responsible taxpayers (e.g. groups with PAYG instalments that cover their entire year tax liability may be perceived worse than a group with a large final income tax payable amount).

15. Disclosed entities must have the opportunity to view any proposed ATO public disclosure

If the government decides to implement this proposal, then notwithstanding the safeguards noted above, we anticipate that potential disclosures for many groups that will require further explanation to "set the record straight" (in addition to the specific issues raised above). Various safeguards are required to achieve this including:

- groups must be given a right to review the ATO's proposed disclosure
- groups should be given the option of providing additional income tax explanations (e.g. detailed tax information contained in publicly available financial reports). One potential solution would be to provide a link to the covered entity's website for more information
- Groups should be allowed to say if they have an Advanced Pricing Arrangement (“APA”), a low ATO risk rating, or if they have been subject to audit or other ATO risk review

16. Safeguards against misleading disclosures – MRRT & PRRT

If the government decides to implement this proposal, MRRT and PRRT taxpayers should be given the option of disclosing State royalties paid (and not just those credited for MRRT/PRRT purposes).

17. If this proposal proceeds then a limited pilot should be considered

As stated, we acknowledge the government's desire to take early action in relation to base erosion and profit shifting concerns.

However this proposal, including necessary safeguards, will require government, Treasury and ATO resources to implement.

As we have stated there will also be a considerable cost burden to minimise the risk of reputational damage for impacted businesses for the reasons disclosed above.

Given that the proposal is untested (from an Australian revenue authority experience and also globally (with the exception of Denmark), then if it is adopted it should be implemented at a much more limited pilot level.

For example, applying this pilot only to companies with a turnover exceeding $1 billion dollars would mean that the deadweight costs to address the reputational and risk issues - the necessary time and resources to develop the necessary further actions to protect their reputations from 'name and shame' misperceptions of their positions - would be less significant than for smaller companies. This pilot would better allow for the development of appropriate safeguards and processes, and evaluation of the actual costs and benefits of the proposal, before it is applied to a wider corporate population.

Therefore, we strongly recommend the government consider the implementation of a limited pilot to companies with a turnover exceeding $1 billion dollars.

18. Substituted accounting periods (SAP)

If the government proceeds with this proposal and if the proposal is to commence with income year 2013-14 then that means for 31 December early balancing SAPs are already in the disclosure environment. A one year deferral for SAPs should be considered for early balancing entities.

19. $100m turnover threshold is too low and the threshold should be profit based

If the government proceeds with this proposal and its risks to corporate reputations and risks of anti-business name and shame actions, then it should be considered only as a pilot limited to extremely large corporate tax entities. We submit that, when considering the threshold for disclosing entities:

a) The proposed threshold could better be based on accounting net income (net profit). This is broadly consistent with the application of the proposals to entities with MRRT or PRRT payable in a year (where MMRT does not become payable until profit exceeds $75 million).

b) if a turnover threshold is applied, threshold should be turnover exceeding $1 billion, consistent with the approach taken for the proposed monthly payment of pay as you go income tax instalments for large companies.

c) After the pilot period, if there will be ongoing public disclosures based on a turnover test, then there would be merit in aligning the threshold with the ATO's Large Business and International segment threshold for companies with turnover exceeding $250 million (please also refer to section 13 below).

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Should any further information or clarification be required, please do not hesitate to contact Alf Capito on 02 8295 6473 or Trevor Hughes on 03 8650 7363 or Tony Stolarek on 03 8650 7654.

Yours faithfully