Institute of Chartered Accountants Australia

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Mr Gerry Antioch

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Dear Gerry

Discussion Paper on *Improving transparency of the Australian Business Tax System*

The Institute of Chartered Accountants Australia (the **Institute**) welcomes the opportunity to make a submission on the discussion paper entitled *Improving transparency of the Australian Business Tax System* (**Discussion Paper**) released by the Assistant Treasurer, the Hon David Bradbury MP, on 3 April 2013.

The Institute is the professional body for Chartered Accountants in Australia and members operating throughout the world. Representing more than 70,000 current and future professionals and business leaders, the Institute has a pivotal role in upholding financial integrity in society. Members strive to uphold the profession's commitment to ethics and quality in everything they do, alongside an unwavering dedication to act in the public interest.

We wish to provide comments on each of the three proposals raised in the Discussion Paper.

Proposal 1 - Transparency of tax payable by large and multinational businesses

In the foreword to the Discussion Paper, the Assistant Treasurer provides an overview of the government's reasons for the proposals:

> *Earlier this year I announced the Government's intention to improve the transparency of Australia's business tax system. This will encourage enterprises to pay their fair share of tax and discourage aggressive tax minimisation practices.*

The Discussion paper then states the objective of proposal 1 as being:

> *... 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 Institute is of the view that publishing the income tax payable of corporate entities with 'reported total income' of $100 million or more will not assist in achieving these aims. In fact, we consider that publishing the information could lead to unintended, undesirable and inequitable outcomes.

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Our reasons for this view are given below.

Meaning of "fair share of tax"

Broadly, the tax legislation that has been put in place by Parliament determines the amount of tax that a corporate entity is required to pay.

Therefore, it should be that an entity that complies with the tax law is paying the correct amount of tax. We are therefore somewhat perplexed by the use of the term "fair share of tax" in this context as though this may be a different amount to that prescribed in legislation. If the Commissioner of Taxation believes it is necessary to challenge a taxpayer's interpretation of the law, the tax law gives the Commissioner the power to amend the assessment and for the taxpayer to have the right to challenge the Commissioner's view.

It is therefore unclear to us how the reporting prescribed by the first proposal will achieve the stated objective which is to "encourage" taxpayers to pay their fair share of tax.

If there are concerns that a different amount of tax ought to be levied in a particular set of circumstances, the tax policy underlying that proposal should be open to debate as to whether the tax laws should be amended.

Discourage aggressive tax minimisation practices

In the Institute's opinion, the proposal is an attempted shortcut that will be largely ineffective in discouraging aggressive tax minimisation. A united effort between governments and the OECD to counter aggressive tax minimisation practices is already underway, with the starting point being an investigation into base erosion and profit shifting (BEPS). We believe that this is the appropriate way forward because the BEPS is a global problem and it requires a global solution.

Potential for misunderstanding

The Institute firmly believes in the desirability of well-informed public debate on tax policy. However, we stress that the quality of such debate should not be compromised by potentially misleading information.

Tax legislation is extremely complex and we query whether the proposed presentation of certain information will in any meaningful way allow the public to better understand the business tax system. Rather the Institute considers that there is a clear risk that this raw data (required to be reported under the first proposal) will lead to a misunderstanding by the general public.

As a starting point, the proposal requires disclosure of a company's total income. Typically, this is the figure disclosed at item 6 of a company's income tax return. Importantly, 'total income' is the gross amount of accounting income before expenses are applied to determine a company's net (accounting) profit or loss. In many cases, total income will have very little correlation with a company's assessable income because, as acknowledged in the Discussion Paper, "total income may include amounts of exempt income, non-assessable and non-exempt income and foreign source income. It may also include extraordinary amounts of revenue such as net domestic or foreign source gains arising from events outside the ordinary operations of the entity".

This list is by no means exhaustive, but it should be sufficient to demonstrate that there are numerous reasons why a company's total income will (almost invariably) have little bearing on the quantum of a company's taxable income. The amount of tax payable in respect of the amount of a company's total income will, therefore, be open to misinterpretation.

Our second point is that there are often large differences between a company's accounting profit and its taxable income. Differences between accounting profit and taxable income will arise due to fair value accounting that is not reflective of tax law, accounting consolidation versus tax consolidation, difference between tax and accounting rates of depreciation/amortisation on assets, and carry forward tax or net capital losses.

In turn, tax payable is likely not to be 30 per cent of taxable income for a variety of reasons including where the taxpayer is eligible for foreign income tax offsets, franking credits, research & development tax offset, etc.

In our view, none of these differences relate to aggressive tax planning, tax minimisation or an attempt not to pay the correct amount of tax, rather they are a product of an intentional fiscal policy.

Our third point is that the general public may compare the reported financial data of one company with another. In this context, the information disclosed under proposal one may be very misleading. For example, consider entities within certain industries such as the food industry that have very small margins. By reporting relatively high total income in proportion to taxable income, the raw figures may be prone to being misinterpreted as meaning that one company is more tax aggressive than another (as what appears to be the case in example 1 in the Discussion Paper).

Notably, example 1 in the Discussion Paper appears to recognise that there will be anomalies with the disclosure of the proposed raw data. We, therefore, fail to see how this proposal will "improve the transparency of the business tax system" or "enable the public to better understand the corporate tax system and engage in tax policy debates". This is because the figures, in themselves, do not show why each of the companies' taxable income is less than its total income and the basis for the amount of income tax paid in the case of B1 Ltd is less than 30 per cent of taxable income.

In summary, the severe limitations of the raw information to be disclosed will be apparent to tax professionals but will not be to the general public. We are concerned that users of such information might jump to incorrect conclusions leading to unfair outcomes such as reputational damage, consumer backlash, etc.

Compliance costs to avoid reputational damage

The Discussion Paper notes that the information to be published by the ATO would be sourced from tax returns so that no additional compliance costs would be placed on taxpayers.

At first glance that appears to be true. However, given there is the potential for the disclosed information to be misconstrued by users (as noted above), the Institute has concerns that a significant burden could be placed on affected entities for example to provide additional information to the public. In particular every company that has a:

- Low ratio of taxable income to gross income
- Low ratio of tax paid to taxable income

will be exposed to the risk of activists or campaigners attacking its reputation and will need to consider investing heavily in preparing public material to protect its reputation.

A low threshold of $100 million total income could put an inappropriate compliance burden on those smaller companies (in particular large proprietary companies) which have less sophisticated media or communications processes or outlets.

Proprietary companies

Listed companies have a wide range of information in the public domain but this is not necessarily the case for all large proprietary companies. For example, large proprietary companies that were formerly exempt proprietary companies that continue to satisfy the criteria in the (former) section 319(4) of the *Corporations Act 2001*, are able to maintain their exemption from lodging financial reports with the Australian Securities and Investments Commission (ASIC). There are a number of family owned and managed companies that fall within this category.

Our members are particularly concerned that proposal one, which requires the ATO to disclose the identity of the company in addition to certain financial information would be sufficient to reveal the identity of the family members that control the company and their private circumstances. This appears to be the case despite the government's assurances that privacy should be maintained over the tax affairs of individuals.

International perceptions

The Institute considers that a decision to publicly disclose confidential tax return details of large companies on a unilateral basis is premature from a global perspective. We believe that the government should wait to see the OECD's action plan on ways to tackle BEPS (multilaterally) due this July and in particular whether publicly disclosing tax return details of large companies is contemplated under that plan. Doing otherwise sends the wrong message to (current and potential) foreign investors in Australia.

(So far as the Institute is aware Denmark is the only other country reporting the tax paid by large companies, and even then is not reporting their total revenue).

Other taxes

We have focused our attention on the income tax disclosures but many of our concerns apply equally to MRRT and PRRT disclosures.

Proposal 2 - Publishing aggregate collections for each Commonwealth tax

The Institute is supportive of this proposal in principle. However, we believe that more detail needs to be provided especially in regard to what aggregated collections would be published under this proposal.

The Discussion Paper notes that in order to protect the privacy of individuals, "the proposal would not apply if the information could reveal the identity of individual (natural person) taxpayers". This privacy issue also needs to be seriously considered in the context of large privately owned companies because there is often an intrinsic link between the name of a (say) private company and a high profile individual.

Proposal 3 - Enhanced information sharing between Government agencies

More detail of this proposal is also needed before it can be properly evaluated.

More specifically, in regard to processes related to the Foreign Investment Review Board (FIRB), it is unclear:

- How exactly the “existing information sharing arrangements for various processes” would be enhanced
- What the “greater range of information” that could be disclosed to the Secretary of the Treasury would be
- How disclosure of that information would benefit the process.

We also note that the Discussion Paper indicates that the proposal would apply in relation to all disclosures or records of protected information made on or after the date of Royal Assent of the amending legislation even if the information to which the record disclosure relates was acquired before that time. This appears to indicate that taxpayers who may have supplied information on the basis that it was protected (or able to be shared) under the current law may now have that information disclosed or shared on a changed basis, that basis being unknown at the time when the taxpayer provided the information.

Final observation

Although not necessarily planned to be breached by proposal one and two (but potentially from proposal three), we note that the relationship of transparency that the ATO has been attempting to develop with large taxpayers over the last decade may be undone as taxpayers may become concerned where commercially confidential information may eventually go once it is shared with the ATO. For many years, the ATO has undertaken a strategy to encourage taxpayers to be open and transparent in managing their tax affairs. This has been evidenced by, inter-alia:

- additional disclosures such as the Reportable Tax Position schedule and the international dealings schedule;
- pre-lodgement tax return reviews;
- annual compliance arrangements;
- advance Pricing Arrangements; and
- priority binding rulings.

This strategy, of encouraging transparency, has to a large extent been successful and resulted in the majority of large taxpayers being found compliant and issued with low risk ratings from the ATO in recent years.

If you would like to discuss any aspect of this submission or require any further information, please do not hesitate to contact me on 02 9290 5609 at first instance.

Yours sincerely

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