



**Australian Government**

# **Improving tax compliance — enhanced third party reporting, pre-filing and data matching**

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Discussion Paper  
February 2014

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## CONSULTATION PROCESS

### Request for feedback and comments

On 6 November 2013, the Government announced its intention to proceed with the 2013-14 Budget measure, 'Tax compliance — improving compliance through third party reporting and data matching.' This measure is designed to improve taxpayer compliance by enhancing the information reported to the Australian Taxation Office (ATO) by a range of third parties through the introduction of new reporting regimes.

This measure is currently scheduled to commence from 1 July 2014.

The Government seeks your feedback and comments on the policy issues outlined in this discussion paper and, in particular, the compliance cost impacts of the proposed reporting regimes. As this paper also provides details about how the proposals could be legislated, you may wish to comment on any law design issues in your submission as well. This paper contains a number of consultation questions that you may wish to use to frame your submission but feel free to raise any other relevant issues.

It would assist the consultation process if stakeholders with specific concerns about these proposals could provide practical examples in their submissions that demonstrate the implications of these proposals and how any alternative approaches could operate.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

All information (including name and address details) contained in submissions will be made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. If you would like part of your submission to remain in confidence then you should provide that information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

### Closing date for submissions: 11 March 2014

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## SUMMARY

The 2013-14 Budget measure 'Tax compliance — improving compliance through third party reporting and data matching' consists of a number of different elements that are designed to collectively improve the information reported to the ATO. Reporting this additional information would allow the ATO to offer an enhanced pre-filing service to taxpayers and better address areas of risk to the revenue. As announced in the 2013-14 Budget, the proposed reporting regimes are currently scheduled to commence in relation to transactions that occur on or after 1 July 2014 (although first reports would not be due to the ATO until after 1 July 2015).

A copy of the Budget announcement is attached at Appendix 1.

Some of the elements of this measure can be implemented by the ATO changing its administrative practices whereas others would require changes to the tax laws. This paper only relates to those elements requiring legislative amendments. Essentially this would involve the creation of new third party reporting regimes in relation to:

- sales of real property;
- sales of shares and units in unit trusts;
- sales through merchant debit and credit services; and
- taxable government grants and other payments.

The ATO has and will continue to consult with relevant stakeholders in relation to the other elements of the measure that can be implemented administratively.

A key consideration in developing the proposed third party reporting regimes is minimising the compliance costs for entities that would need to report additional information to the ATO. Accordingly, this paper focuses on identifying the information that would be of benefit to the ATO as well as identifying those entities that are likely to already collect much of this information in the ordinary course of their business or other activities. The paper also briefly discusses when the ATO would need to receive the information for it to be of practical assistance as well as how the regimes could work in practice.

Building on these policy issues, the paper also outlines a preliminary set of law design principles that could form the legislative basis for the new reporting regimes. However, it is important to note that the final form of any draft legislation would ultimately depend on the final form of the policy design and this, in turn, will be informed by the outcomes of this consultation process.

Depending on these outcomes, and any subsequent Government decisions, the Government envisages also consulting on the draft legislation before introducing any amendments into Parliament.

# 1. INTRODUCTION

The objective of an efficient tax administration is to collect the maximum amount of revenue with minimum administration and compliance costs. Since 1986-87, Australia's income tax system has largely operated on a self-assessment basis for individuals meaning that it is the individual taxpayer who is obliged to self-assess their income tax affairs and to report relevant information to the ATO. For most people this means preparing and lodging an annual income tax return.

Starting in 2007, the ATO has offered individual taxpayers a pre-filling service to assist them in voluntarily meeting their obligations when preparing their income tax return. In essence, the ATO provides its pre-filling service by using the information it has received for compliance purposes and adding it directly to the relevant tax return label or providing additional information in a summary form.

The ATO now receives sufficient information so that in the majority of cases it is possible to completely pre-fill a simple tax return in relation to:

- wage and salary data from employers;
- government welfare payments from Centrelink and other providers;
- interest income from financial institutions;
- dividend income from share registries; and
- Medicare levy surcharge and private health insurance policy details from private health insurers.

Furthermore, the ATO is proposing to make greater use of this information by introducing a new online, substantially pre-prepared tax return in 2014 for taxpayers with straightforward affairs.

However, the usefulness of pre-filling and therefore the availability of future pre-prepared tax returns depends on the ATO receiving relevant and timely information from third parties. Currently, the ATO receives a range of information from third parties for the purposes of post-lodgement compliance activities through legislated reporting regimes as well as information collected under the Commissioner of Taxation's (Commissioner's) general information gathering powers. However, whilst information gathered through existing legislative reporting regimes is generally of a high quality, information collected under the Commissioner's general information gathering powers tends to have shortcomings in relation to timeliness, data formats and the ability to readily match it to the relevant taxpayer.

As such, the introduction of formal third party reporting regimes has the potential to further reduce the compliance costs for individual taxpayers by increasing the range of information reported to the ATO. It also has the ability to be an effective compliance response to deal with some taxpayers omitting or underreporting income.

Nonetheless, the introduction of such a regime involves a policy trade-off between the compliance benefits to taxpayers of improved ATO data-matching capabilities and the compliance costs imposed on third party reporters. Imposing these reporting obligations only on those entities that already collect relevant information in the ordinary course of their business, or through other activities, and

integrating the obligation into existing natural business systems is likely to minimise compliance costs. To the extent that these compliance costs are less than the potential compliance benefits to individual taxpayers, and the tax system more generally, then there may be a persuasive policy case for introducing such a regime.

Developing a comprehensive and robust third party reporting regime has the potential, over time, to challenge many of the assumptions underpinning Australia's self-assessment system. As such, implementing these regimes may provide opportunities to change how individuals and other self-assessment taxpayers interact with the tax system in the future.

## 2. THE PROPOSED THIRD PARTY REPORTING REGIMES

The proposed reporting regimes would be designed so that in most cases third parties need only provide information to the ATO that they receive or record in the ordinary course of their business or operations. However, as an effective third party reporting regime depends on the ATO being able to match the reported data to the relevant taxpayer some additional identifying information may be required.

For individuals, the minimum amount of identifying information needed to provide high confidence identity matching for tax purposes is their name, address and either date of birth or Tax File Number (TFN). However, it is important to note that there are tax and privacy law restrictions on requesting, recording and using TFN's which would need to be taken into account when considering the use of TFNs in these proposed reporting regimes. For business taxpayers (including individuals in a business), the minimum information is name, address and either an Australian Business Number (ABN), Australian Company Number (ACN) or TFN. These combinations of details are generally known as an entity's 'unique identifiers'.

Whilst it is likely that many of the proposed reporting entities currently collect an entity's unique identifiers in the ordinary course of their activities, there may be some that do not. These entities would be required to collect this additional information and report it to the ATO under the proposed reporting regimes.

In addition, it would be important that third parties can report information to the ATO in a timely manner, especially as the ATO can only pre-fill information for individual taxpayers once it has been received. The current lodgement timeframes for most individuals start on 1 July, which means ideally information would be reported to the ATO throughout the income year or as soon as possible after 30 June. However, such timeframes need to recognise that in some cases it is not possible to finalise this information until after the end of the income year and that businesses generally have competing priorities at this time especially in relation to their own accounts and financial affairs. Of note, the ATO's preference is to transition to event based reporting in future years which will inform reporting formats, channels and specifications as well as provide for more frequent reporting of information throughout the year.

Reporting entities that do not comply with their reporting obligations could be subject to existing administrative penalties contained in Divisions 284 and 286 of Schedule 1 to the *Taxation Administration Act 1953* that apply in relation to incorrect or overdue statements.



### Consultation questions

Do you routinely collect an entity's unique identifiers in the ordinary course of your business or activities? Would it be of assistance if the proposed reporting regimes allowed the ATO to correct any inaccurately captured and reported TFNs and ABNs (where possible) by providing the correct information to the reporting entity?

Would the existing administrative penalty framework provide an adequate enforcement mechanism for the proposed reporting regimes? Are there any alternative approaches that could enhance the reliability and accuracy of the reported information?

Would the proposed reporting regimes provide any other benefits to the reporting entity and the broader tax system as a whole? If not, could the proposed reporting regimes be modified to provide a wider range of benefits?

## 2.1 SALES OF REAL PROPERTY

Sales of real property may give rise to income tax (including capital gains tax (CGT)) and goods and services tax (GST) consequences. The proposed reporting regime would apply to all real property sales and transfers executed in all States and Territories.

### What information would be required?

To implement this proposal, the ATO would need to receive the following type of information for each real property transaction:

- vendor and purchaser name;
- vendor and purchaser address;
- vendor and purchaser date of birth (for individuals);
- vendor and purchaser ABN or ACN (for entities);
- property details, including ID and address;
- property type (for example residential, commercial, new residence or vacant land);
- contract date;
- settlement date; and
- consideration and any other costs and charges.

Whilst this list contains the core information required to implement this proposal, the exact data specifications would be negotiated with the reporters during the implementation of this proposal.

## Who currently collects this information?

To minimise the extent to which a third party reporter would need to collect additional information the proposed reporting obligation should rest with a party that has ready access to the majority of the required information. Whilst there are a number of participants involved in real property transactions, those most likely to have ready access to the required information would be the purchaser(s) and the relevant State or Territory government agencies.

State and Territory government agencies are integral participants in any real property transaction because they give legal effect to the transfer of title and collect state taxes and duties on the transfer. The transfer of title is conditional upon providing information to State and Territory agencies ensuring there is a high degree of compliance with the provision of that information required to execute the transfer. These functions are managed primarily through the State and Territory Land Titles and Revenue Offices.

While the purchaser or their agent may be able to provide much of the information sought by the ATO and could be either an alternate or supplementary reporting option, the additional compliance burden on purchasers is likely to be proportionally greater than on State and Territory government agencies.

## When would information need to be reported to the ATO?

The reporting of property information would not necessarily be restricted to an annual report. The ATO would initially seek to receive annual reports and then seek to move to quarterly, monthly or real time reporting.

## How could the proposed reporting regime work in practice?

The ATO would require all information to be reported in an electronic format. For example, the ATO could develop a single reporting specification which the States and Territories could use to update their systems to generate the report that is to be lodged with the ATO.

### Consultation questions

What are your existing real property related reporting obligations? Do you currently report much of this information to other Government agencies? How could these obligations be modified to minimise your compliance costs?

Would it be feasible to collect all the information sought by the ATO? What information do you currently collect? Are there any other entities that collect some, or all, of this information?

What systems do you use to comply with your existing reporting obligations?

What would constitute the bulk of your compliance costs (implementation or ongoing) in complying with these obligations? Would a more frequent reporting obligation (such as quarterly or monthly) impose significantly more ongoing compliance costs than an annual obligation?

Is a start date of 1 July 2014 feasible? If not, how long would you need to develop any necessary system changes?

Are there any other impediments to the ATO receiving or using this information?

## 2.2 SALES OF SHARES AND UNITS

Sales of shares in companies and units in unit trusts may give rise to income tax (including CGT) consequences. Initially, the proposed reporting regime would apply to transactions for shares in companies listed on a recognised stock exchange ('listed companies'). However, going forward it may be possible and necessary to bring sales of 'private company' shares within the reporting regime.

### What information would be required?

To implement this proposal, the ATO would need to receive the following type of information in relation to each share transaction:

- shareholder's name, address and date of birth (if applicable);
- shareholder's TFN, ABN or ACN (if applicable);
- TFN withholding tax code;
- 'non-resident indicator' in respect of the shareholder;
- company name and ASX code, and the CHESS and internal registry reason codes;
- shareholder's account holding number (Share Reference Number (SRN)/Holder Identification Number (HIN)) (if applicable);
- acquisition and disposal dates, prices and quantities;
- incidental costs (such as broker's fees); and
- any capital returns or payments and the associated dates.

Similarly, the ATO would need to receive the following type of information for each unit transaction:

- unit holder's name, address and date of birth (if applicable);
- unit holder's TFN, ABN or ACN (if applicable);
- 'non-resident indicator' in respect of the unit holder;
- TFN withholding tax code;
- name, ABN and/or TFN of the trustee and the trust and any other information required to specifically identify the unit(s) subscribed/redeemed;
- subscription (purchase) and redemption (sale) dates;
- quantity of units purchased/disposed of;
- incidental costs (such as broker's fees or initial entry fees); and
- any non-assessable payments paid by the trust to the unit holder in respect of the units.

Whilst this list contains the core information required to implement this proposal, the exact data specifications would be negotiated with the reporters during the implementation of this proposal.

### Who currently collects this information?

There are a number of participants involved in share transactions, however, those most likely to have ready access to the required information would be the 'market participant' executing the transaction, the clearing house provider used by the market participant to facilitate the transfer and the Share Registry maintaining the company's share register (particularly in relation to 'off-market' transfers).

In the case of unit transactions, the entity most likely to have access to the required information may differ depending on how units are exchanged. In some cases the trust itself will transfer ownership of interests through cancelling existing, and issuing new units. While in others the interests are bought or sold on the stock exchange. Where the units are subscribed and redeemed it may be the trust itself that could report. Where the units are traded on the stock exchange it will be the market participants that could report.

### When would information need to be reported to the ATO?

The reporting of share and unit information would not necessarily be restricted to an annual report. The ATO would initially seek to receive annual reports and then seek to move to quarterly, monthly or real time reporting.

### How could the proposed reporting regime work in practice?

The ATO would require all information to be reported in an electronic format. The ATO could develop reporting specifications that reporters could use to update their business software (either in house or using software providers) to generate the report that is to be lodged with the ATO.

### Consultation questions

What are your existing share and unit-related reporting obligations? Do you currently report much of this information to other Government agencies? How could these obligations be modified to minimise your compliance costs?

Would it be feasible to collect all the information sought by the ATO? What information do you currently collect? Are there any other entities that collect some, or all, of this information? Is similar information readily available in relation to unlisted shares?

What systems do you use to comply with your existing reporting obligations?

What would constitute the bulk of your compliance costs (implementation or ongoing) in complying with these obligations? Would a more frequent reporting obligation (such as quarterly or monthly) impose significantly more ongoing compliance costs than an annual obligation?

Is a start date of 1 July 2014 feasible? If not, how long would you need to develop any necessary system changes?

Are there any other impediments to the ATO receiving or using this information?

## 2.3 SALES THROUGH MERCHANT CREDIT AND DEBIT SERVICES

Merchants utilise payment facilities to process debit and credit card payments from customers either in store or through online payment mechanisms. These payments typically give rise to income tax consequences for the merchant. The proposed regime applies to the total business sales made by a merchant through a debit and credit card payment facility.

### What information would be required?

To implement this proposal, the ATO would need to receive the following type of information:

- merchant name, address and ABN or date of birth;
- all monthly purchase/sale amounts from credit card and debit card transactions; and
- all monthly cash out amounts.

Whilst this list contains the core information required to implement this proposal, the exact data specifications would be negotiated with the reporters during the implementation of this proposal.

### Who currently collects this information?

The reporter will be the entity that provides the payment facilities to the merchant. Traditionally, this has been financial institutions who operate in Australia's payment system and are attached to card schemes (for example financial institutions and banks providing such services). However, the expansion of the e-commerce market has impacted the methods consumers use to purchase goods and services. Under this proposal where an entity provides merchant payment facilities for debit and credit payments they would need to report to the ATO.

## When would information need to be reported to the ATO?

The reporting of credit and debit merchant information would not necessarily be restricted to an annual report. The ATO would initially seek to receive annual reports and then seek to move to quarterly, monthly or real time reporting.

## How could the proposed reporting regime work in practice?

The ATO would require all information to be reported in an electronic format. The ATO would develop reporting specifications that reporters could use to update their business software (either in house or using software providers) to generate the report that is to be lodged with the ATO.

### Consultation questions

What are your existing merchant credit and debit card-related reporting obligations? Do you currently report much of this information to other Government agencies? How could these obligations be modified to minimise your compliance costs? Is there anything the ATO could do to improve the ABN information of your existing client base?

Would it be feasible to collect all the information sought by the ATO? What information do you currently collect? Are there any other entities that collect some, or all, of this information?

What systems do you use to comply with your existing reporting obligations?

What would constitute the bulk of your compliance costs (implementation or ongoing) in complying with these obligations? Would a more frequent reporting obligation (such as quarterly or monthly) impose significantly more ongoing compliance costs than an annual obligation?

Is a start date of 1 July 2014 feasible? If not, how long would you need to develop any necessary system changes?

Are there any other impediments to the ATO receiving or using this information?

## 2.4 GOVERNMENT GRANTS AND PAYMENTS

Government entities make taxable payments to suppliers, such as contractors or consultants, for the provision of a range of services. The proposed regime would only apply to payments that are not already subject to existing legislative reporting requirements (for example, the pay as you go withholding provisions that apply to employee salary and wage payments already have existing reporting requirements).

In addition, many government agencies also provide grants to individuals and other entities for a range of purposes and these can often be assessable income in the hands of the recipient. Broadly, a government grant is a sum of money or non-cash benefit provided by a government entity for a specified purpose. Not all grants are taxable in the hands of the recipient and this proposed regime would not apply to those grants which do not affect a taxpayer's tax outcome (for example, grants that are non-assessable non-exempt income).

## What information would be required?

To implement this proposal, the ATO would need to receive the following type of information for each grant or payment recipient:

- ABN (for grants and payments made to businesses);
- TFN or date of birth (for grants made to non-business individuals);
- full name;
- address;
- gross amount paid;
- total GST (if applicable);
- BSB and account number; and
- other contact details such as phone number or email address.

Whilst this list contains the core information required to implement this proposal, the exact data specifications would be negotiated with the reporters during the implementation of this proposal.

In relation to grant recipients, the ATO would also benefit from information about the name of the grant or the program under which the grant was made as well as the date of payment.

## Who currently collects this information?

All government entities including federal, state, territory and local government bodies that make grants and payments are likely to collect some of this information. Information that is currently not collected may be able to be collected by requesting the entity applying for the grant or providing the service to provide additional information.

## When would information need to be reported to the ATO?

A potential annual reporting due date of 21 July would align with the existing taxable payments annual report that applies to payments in the building and construction industry. This would also allow the ATO to pre-fill information for taxpayers who do not lodge their tax return until late-July. In later years, the ATO may seek to move to more regular reporting.

## How could the reporting obligation work in practice?

The existing taxable payments annual report could provide an appropriate reporting mechanism. Most data fields are already catered for in this report and only minor changes would be required to reflect the requirements of this proposal. Software developers use ATO reporting specifications to update their business software to enable businesses to generate annual reports that can be lodged with the ATO. Existing electronic reporting specification for the taxable payments annual report would need to be updated to cater for any additional data fields required for reporting of grants. Once these are updated and software is available the annual report could be lodged online.

### Consultation questions

What are your existing government grant and payment-related reporting obligations? Do you currently report much of this information to other Government agencies? How could these obligations be modified to minimise your compliance costs?

Would it be feasible to collect all the information sought by the ATO? Are there any other entities that collect some, or all, of this information?

What systems do you use to comply with these existing reporting obligations?

Can your systems distinguish between taxable payments/grants and tax-exempt payments/grants? Have you sought advice from the ATO about these payments or grants in the past and how has this worked in practice? If not, what support could the ATO provide to assist you in determining these consequences?

What would constitute the bulk of your compliance costs (implementation or ongoing) in complying with these reporting obligations? Would a more frequent reporting obligation (such as quarterly or monthly) impose significantly more ongoing compliance costs than an annual reporting obligation?

Is a start date of 1 July 2014 feasible? If not, how long would you need to develop any necessary system changes?

Are there any other impediments to the ATO receiving or using this information?



### 3. PRELIMINARY LAW DESIGN PRINCIPLES

The existing legislative obligations for entities to report information to the ATO are spread throughout the tax legislation. For example, regulation 56 of the *Income Tax Assessment Regulations 1936* requires various investment bodies to provide an annual investment income report to the ATO (this report allows the ATO to pre-fill, amongst other things, an individual's dividend and bank interest payments) whereas Division 410 of Schedule 1 to the *Taxation Administration Act 1953* contains the structural framework for the taxable payments annual report that applies to payments in the building and construction industry.

Given the breadth of the proposed reporting regimes, as well as the fact that there is currently no consistent legislative approach for third party reporting, it may be appropriate to create a new legislative framework within Schedule 1 of the *Taxation Administration Act 1953* specifically to support this type of reporting. This could, over time, allow for further third party reporting obligations to be established within a consistent framework. Of note, the Government is currently working towards signing and enacting a treaty-status Intergovernmental Agreement with the United States of America (US) to comply with the US Foreign Account Tax Compliance Act (FATCA) to enable the financial sector to comply with US FATCA reporting rules. This would, in effect, require the development of a similar third party reporting regime for entities in the financial sector. There may be legislative synergies if these regimes were to be co-located in Schedule 1 of the *Taxation Administration Act 1953*.

As an initial discussion point, the following law design principles could form a legislative basis for the four proposed reporting regimes discussed in Part 2.

An entity (the reporting entity) is required to provide information periodically to the Commissioner in relation to an event that is likely to have tax consequences for another entity (the primary entity):

- where the reporting entity receives or records that type of information in the ordinary course of their operations or business; and
- with sufficient detail so that the Commissioner can identify the primary entity (for example, by reporting the entity's unique identifiers).

Specific reporting entities and their obligations could be incorporated into the legislation by reference to this principle with additional entities and obligations being added as needs be over time.

The approved form provisions contained in section 388-50 of Schedule 1 to the *Taxation Administration Act 1953* provide an existing legislative mechanism for entities to give information to the ATO. Incorporating the approved form framework into the proposed reporting regimes would provide the ATO with structural flexibility for specifying the precise form of information required.

As noted in Section 2, the existing administrative penalty framework in Divisions 284 and 286 of Schedule 1 to the *Taxation Administration Act 1953* could apply in relation to entities that do not comply with any reporting obligations.

### Consultation questions

Do you see merit in developing a new 'third party reporting' framework in Schedule 1 of the TAA 1953? Are there any alternative approaches? Have any other jurisdictions legislated similar reporting regimes? How does their legislation work in practice?

Should additional elements be included in the law design principle? Are there existing legislative concepts and definitions that could be used? For example, section 41 of *A New Tax System (Australian Business Number) Act 1999* provides a definition of 'government entity' and section 995 1 of the *Income Tax Assessment Act 1997* provides a definition of 'local government body' — both of which could form the basis of the reporting regime in relation to government grants and payments. Similarly section 202A of Part VA of the *Income Tax Assessment Act 1936* defines 'unit trust' which could form the basis of the reporting regime in relation to units in unit trusts.

Would the approved form provisions provide sufficient flexibility to ensure the structural sustainability of the proposed reporting regimes?

## APPENDIX 1 — COPY OF 2013-14 BUDGET MEASURE DESCRIPTION

### Tax compliance — improving compliance through third party reporting and data matching

Revenue (\$m)	2012-13	2013-14	2014-15	2015-16	2016-17
Australian Taxation Office	-	-	115.1	242.7	252.4
<i>Related expense (\$m)</i>					
Australian Taxation Office	-	8.8	20.2	24.2	22.3
<i>Related capital (\$m)</i>					
Australian Taxation Office	-	1.6	0.6	-	-

The Government will provide \$77.8 million over four years to the Australian Taxation Office (ATO) to improve compliance and provide a level playing field for Australian taxpayers by expanding data matching with third party information. This measure is estimated to have a gain to revenue of \$610.2 million over the forward estimates period. In underlying cash terms, the estimated increase in receipts is \$431.7 million.

The information provided to the ATO will also improve the pre-filling of tax returns, making tax time simpler for taxpayers.

The measure will establish new and strengthen existing reporting systems for:

- taxable government grants and specified other government payments;
- sales of real property, shares (including options and warrants), and units in managed funds;
- sales through merchant debit and credit services;
- managed investment trust and partnership distributions, company dividend and interest payments; and
- transactions reported to the ATO by the Australian Transaction Reports and Analysis Centre.

The Government will consult with key stakeholders including the States and Territories on the design of these systems.