

11 March 2014

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

By email: thirdpartyreporting@treasury.gov.au

Dear Sir/Madam

**DISCUSSION PAPER - IMPROVING TAX COMPLIANCE - ENHANCED THIRD PARTY REPORTING, PRE-FILLING AND DATA MATCHING
COMMENTS BY STOCKBROKERS ASSOCIATION OF AUSTRALIA**

The Stockbrokers Association of Australia Limited (“the Stockbrokers Association”) appreciates the opportunity to provide these comments on the Discussion Paper “Improving Tax Compliance – Enhanced Third Party Reporting, Pre-Filling and Data Matching”.

The Stockbrokers Association is the peak industry body representing institutional and retail stockbrokers and investment banks in Australia. Our membership includes stockbroking firms across the spectrum, including the largest wholesale global investment banks, stockbrokers who are part of local major banking groups, and domestic broking firms from medium-sized firms and down to the smallest retail firms.

We refer to previous discussions between representatives of the Stockbrokers Association and staff of the Australian Taxation Office and also with Treasury at which preliminary concerns of the Association about the potential for a comprehensive transaction reporting obligation being placed on stockbrokers, as foreshadowed by the Discussion Paper.

The Association notes and understands the concerns of Governments around the world to ensure that their taxpayers are meeting their obligations and to prevent the evasion of tax. We appreciate that that Governments are keen to ensure that their finances are not eroded by tax evasion to such an extent that public programs and services that are important to citizens are not placed in jeopardy.

Summary of Key Points

A summary of the key points of our Submission on the Discussion Paper are:

- The cost of a mandatory reporting requirement on the stockbroking industry to furnish the ATO with the information referred to in Section 2.2 of the Discussion Paper would be significant. Our members have indicated that system development costs alone could amount to \$40 million or more.
- The magnitude and cost of the transactional data that would need to be reported on an ongoing basis would be huge, and should not be underestimated.
- The value of the information that would be obtained by the ATO from stockbrokers is highly questionable.
- Data is already obtainable from share and unit trust registries, and also shortly from ASIC, which should enable ATO, with a suitable data matching program, to achieve a satisfactory outcome without imposing the substantial cost on the stockbroking industry of establishing a whole new reporting obligation. Therefore, in our view, the proposal would not meet any reasonable cost/benefit analysis or regulatory impact assessment.
- Further consideration of the reporting proposal should be deferred until after the potential application of the data to be obtained by ASIC for surveillance purposes can be better investigated.
- The Stockbroking industry has been through a period of great difficulties since the commencement of the Global Financial Crisis in 2007. The industry has endured prolonged economic challenge, and significant regulatory and technological reform. The sector has been forced to pay significantly higher compliance and IT costs already as a result.
- Imposing this significant additional regulatory cost to generate the enhanced transactional reporting at this time for very dubious benefit would be an additional impost on the stockbroking industry at a time when it can least bear it. There is the real potential that this will impact on employment and financial

activity in the industry, as well as the potential for higher transactional costs impacting investors.

- Stockbrokers are already paying for the enhanced ASIC Regulatory Surveillance system and for provision of enhanced regulatory data to ASIC. They are entitled to see that the maximum use is made of the information that they are already paying for, before any additional impost to pay for more systems is placed on them.

Existing reporting of Share Transactions

Stockbrokers are required to confirm transactions to clients after the transaction has been completed. However, there is no requirement to report to the client on a periodic basis of all transactions for the period.

There is also no requirement on stockbrokers to report client transactional data to Exchanges or to anyone else. Certain data is required to be reported by brokers who operate crossing systems, but that is all.

Hence, any requirement that would be imposed by the Government under the proposals in the Discussion Paper would be a fresh one.

Our members have advised that the costs of developing systems that would report all shareholder transactions would be very large. One member firm has embarked on a program to develop a system that will enable this, but has made the decision to do so for commercial reasons and having the assets of a large banking group behind it. Its assessment of the likely costs of the exercise is that it will be in excess of \$1 million.

Costs are likely to be smaller for broking firms that are not as big, however they would correspondingly also not have the same level of financial backing behind them to undertake such a project. Across an industry comprising in the order of 80 or so stockbroking firms, total system development costs of \$40 million or more can be foreshadowed.

In addition, the reporting itself would be a very large burden. Again, the volume of reporting will depend on the number of transactions carried out by each firm. The volume of transactions being executed by a large online broking firm will be in the hundreds of millions annually. The sheer size of the exercise of reporting such volumes of data, not to mention the cost, would be significant.

Whilst smaller and medium firms would face reporting volumes that would not be as big, however as mentioned before, the level of resources available to those firms would be correspondingly less.

Shortcomings of Information from brokers

We understand the shortcomings presented by information obtainable from share registries as far as the ATO is concerned. Principally, the price of the transaction, brokerage and any other transaction costs are unlikely to be held by the registry, merely the date of the transaction and the volume of the financial product transacted.

However, whilst this missing information would be held by stockbrokers, it is questionable to what extent the objective of the Project in assisting pre-filling of taxpayer returns will be furthered by information to be sought from stockbrokers such as to justify the imposition of a very expensive reporting requirement.

Shortcoming of data from stockbrokers include:

- Stockbroker transaction data would capture clients who may be Australian taxpayers and those who were not. Without further mandating the capture of taxpayer status, as well as a requirement on clients to ensure that this information is maintained up to date, there would be a wastage of cost through over-reporting of unnecessary information
- a stockbroker will not know whether clients have treated the financial products on revenue account or on capital account.
- in the absence of a historic pool of data, the purchase price and entry costs of will not be known to the ATO (or to the stockbroker)
- even with knowledge of the purchase price, it will not be known whether the client has elected to apply cost-averaging to products acquired, or if not, which parcel of shares is actually being sold
- many clients use more than one broker, and the broker reporting the sale may not have acted on the purchase of the products for the client or be aware of any purchase details

In short, it is very difficult to see how the ATO can advance its objective of pre-filling client returns to any meaningful degree, even if the expensive broker reporting obligation were to be introduced. If accurate pre-filling does not appear achievable, then query whether the information that a parcel of financial products was sold on a certain date, thereby crystallising a potential reporting obligation in the taxpayer's return, which can be monitored and the subject of audit by the ATO, is all that can realistically be achieved. As this information is already obtained from share registries, we believe that the argument for the stockbroker reporting proposal is not made out.

ASIC Order Information

As previously mentioned, stockbrokers have already been placed under expensive obligations to comply with the ASIC enhanced surveillance data reporting requirement, due to come into effect in 28 July 2014.

The system development to comply with this has been considerable. In addition, stockbrokers are meeting some 80% of the costs of ASIC's Market Supervision costs (some \$42.4 million over the next 4 years) through an industry cost recovery levy. These costs include the creation of ASIC's market surveillance capability.

Details that can identify the client are required to be added to the electronic order record so that ASIC can carry out real-time market surveillance of which parties are carrying out which trading.

If ASIC is able to identify the underlying client from the order information, then we would have thought that the ATO with a suitable data matching program, should be able to do likewise.

We note that ASIC has set out a range of potential data that is able to be used as the client identifier, and that ASIC is not legally able to require the use of a Tax File Number to do so. It is also unlikely that investors would choose to divulge their TFN to their brokers for this purpose. Notwithstanding this, if ASIC can ascertain who is responsible for which orders and trades from the information that is provided, then we cannot see why the ATO cannot be provided with the same information so that it can reach the same results for its purposes.

Hence, the stockbroking industry, having been required to pay the cost of establishing a complex reporting system for market integrity purposes, does not see why this system should not be adapted to the maximum extent to satisfy the ATO's purposes, rather than be required to meet the cost of another very expensive reporting obligation that arguably does not achieve a satisfactory outcome.

Globally driven regulatory change

We note that there are a number of other reporting obligations in the course of consideration that have been generated by Australia's international relations with various overseas countries. These include the US FATCA regime and the OECD regime for the Automatic Exchange of Information.

There have also been the recent amendments to the AML/CTF Rules dealing with enhanced customer due diligence regarding beneficial ownership.

These obligations are being progressed in Australia according to timetables that appear to be driven by international imperatives, important no doubt as they may be. However, all of these areas traverse similar territory, of ascertaining data about clients, including taxation information, and reporting to the ATO.

Without resiling from our fundamental argument, that the proposed stockbroker reporting regime has fundamental flaws that render the cost/benefit of proceeding with it to be negative, we also strongly urge that Treasury consider the initiatives in this Discussion Paper in a co-ordinated way with the various other initiatives referred to above. There may be some aspects of one regime that can dovetail in with another, and information that is obtained could be of use to many or all of the initiatives.

We therefore urge Treasury to take steps to see that these projects, together with the proposals in this Discussion Paper, proceed in a co-ordinated way. Our members have consistently articulated that system changes that can be co-ordinated are more efficient in terms of resource expenditure than when changes are introduced in a piecemeal way. The cost of system development rises exponentially the more times that changes need to be made or systems tweaked.

As mentioned above, we do not believe that a cost benefit analysis would support introducing a stockbroker reporting requirement as envisaged in the Discussion Paper. If assuming for the moment it were to be introduced, the magnitude of the task would be such that the target date of 1 July 2014 mooted in the Discussion Paper would be quite unrealistic. A considerably longer period would be needed for a project of that magnitude.

For the reasons mentioned, we would urge that consideration of the objectives of this exercise should be considered in a holistic way in conjunction with the other taxation related projects referred to so that any additional regulatory obligations be designed and introduced in as efficient a way as possible.

We would be happy to discuss any issues arising from our submissions on this issue. Should you require any further information, please contact Peter Stepek, Policy Executive, on (02) 8080 3200 or email pstepek@stockbrokers.org.au

Yours sincerely,



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