

Appendix A

Submission supporting excluding Australian Private Companies from the ATO's Public Disclosures (non-confidential Appendix)

This is a submission from a private company ("Private Co") which wishes its name and the names of the relevant family members who own the private company to remain confidential.

Private Co welcomes the opportunity to provide our comments on the Exposure Draft of the *Tax and Superannuation Laws Amendment (Better Targeting the Income Tax Transparency Laws) Bill 2015 (Draft Law)*. The Draft Law is intended to exclude private Australian companies from Australia's laws which require Australian Taxation Office (ATO) public reporting of significant disclosures about the turnover, taxable income and tax payable by Australian companies with incomes over \$100 million per annum (ATO public reporting measures), with the first public reporting expected possibly in October 2015 based on income of the year ended 30 June 2014.

Private Co is involved in secondary industries and operates both locally and internationally. Created in the 20th century, Private Co has over 700 staff and is ultimately owned by several family members. Private Co is not required to lodge public financial reports under Section 292 of the Corporations Act 2001.

We have seen the Assistant Treasurer's summary explaining the amendments to the ATO Public Reporting measures¹ to exclude private companies, and agree with the Assistant Treasurer's propositions that:

- Individuals including those owning private companies have a fundamental right to privacy;
- The disclosed information is commercially sensitive and by virtue of its release would disadvantage Private Co;
- The public disclosure of our tax information may mislead and be misinterpreted by the public, which may result in reputational damage to Private Co and may pose personal safety concerns for the individual owners of Private Co; and
- Reputational or personal safety concerns should not be trivialised.

We have also seen a March 2015 media article² which reported Chris Jordan, the Commissioner of Taxation, commenting on the ATO Public Reporting measures:

"I think if you look at the history of the matter, it was really for multinational companies operating here, disclosing quite low revenue".

"I understand, and this mainly what I've read in the media, that there's a lot of concerns about the private companies [being included] in these disclosures. [There are] personal reasons but also competitive reasons. People saying, well their [private companies'] margins might be looked at. If they're a major supplier to some of the major retailers there might be pressure on them to reduce their prices."

¹ <http://www.joshfrydenberg.com.au/quest/opinionDetails.aspx?id=183>

² <http://www.smh.com.au/business/the-economy/atos-chris-jordan-says-tax-disclosure-laws-not-intended-for-private-companies-20150319-1m2r46.html>

We also provide our additional comments on issues that specifically impact Private Co and its owners

Publicly disclosed information is commercially sensitive, which could disadvantage Private Co

The disclosed information will provide commercially sensitive information to the market. The availability of this information to customers and suppliers could have a significant impact on our competitiveness in both our domestic and offshore markets. The detrimental impact to our competitiveness is likely to be exacerbated by the concentrated nature of the Australian food, beverage and petrol retailing landscape to which we supply the majority of our products. Given the strong market position of major Australian supermarkets and multinationals we are opposed to publicly disclosing this commercially sensitive information.

Reputational concerns for Private Co

We are also concerned that the information to be disclosed would only provide a snapshot of the position of Private Co. The disclosure may mislead and be misinterpreted by the public and this may result in reputational damage. For example, our taxable income as a percentage of turnover is affected by factors such as depreciation and capital allowances of significant capital investment undertaken by Private Co, as well as competitive pressures on our margins. We believe that the public and “special interest groups” who do not have a complete and thorough understanding of Australian income tax may not be able to properly interpret the figures with the limited information available.

Accordingly, should these circumstances eventuate, Private Co could be forced to incur significant new costs in protecting our strong brand and reputation from misinformed analyses.

Further, in our view, the disclosure regime could infer a position which is not reflective of the strong (and private) working relationship that Private Co has with the Australian Taxation Office, as well as our robust commitment to correct and comprehensive tax compliance and reporting.

Right to privacy and personal safety concerns

In our view, ATO reporting does not apply to individuals on the basis of their human rights to privacy. The Explanatory Memorandum states that:

“5.70 Schedule 5 to this Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

5.71 Item 1 of Schedule 5 amends the Taxation Administration Act 1953 (TAA 1953) to require the Commissioner to make limited information about the tax affairs of large corporate taxpayers public.

5.72 As these amendments apply only to companies and other non-individual entities, they do not engage any human rights.”

Private Co represents individuals and families. This is very different to widely held public companies which, by being public, give up their right to privacy as they have many shareholders. Our company’s affairs relate to family activities and our family should be entitled to the same fundamental human right to privacy as individuals are more generally.

We believe it is important to note that the owners of Private Co and their close relatives maintain a relatively low public profile, participate in the local community and do not ostentatiously display their assets. We have serious concerns that the public disclosures will adversely affect relationships outside

the family, and adversely affect the desire of the family to live as ordinary Australians with ordinary lifestyles. As such, we have significant concern that the disclosures will impact the lives of family members and will mean that the family's children and adults will be burdened by people seeking money and undue harassment.

* * * * *

Thank you for providing us with the opportunity to provide a submission on the Draft Law.