



ECG SUBMISSION

Improving Tax Compliance - Enhanced Third Party Reporting, Pre-filling and Data Matching exposure draft

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ABOUT THE ELECTRONIC CONVEYANCING GROUP

The members of the Electronic Conveyancing Group (ECG) are the Australian Institute of Conveyancers, the Law Council of Australia and the Australian Bankers Association. The ECG was principally formed to represent the primary user groups proposing to use the national electronic conveyancing system for registration of the principal land title transactions with the State and Territory land registries, and for the financial settlement of those transactions. The Property Exchange Australia, (PEXA) platform is the only operator authorized by the Australian Registrars Electronic Conveyancing Council (ARNECC) to operate such a system. ECG's aims are to be the principal collaborative voice of both the legal and practical issues associated with the introduction of electronic settlements for banks, licensed conveyancers and lawyers.

The ECG is concerned to evaluate and ensure that the expected improved tax compliance from enhanced third party reporting, pre-filling of taxpayer data and Tax Office data matching measures do not create any unnecessary inefficiencies or extra unwarranted compliance costs, within the conveyancing systems. Nor should it have adverse impacts on the members of each constituent body of the ECG or ultimately the public. Any changes should be equitable and cost effective to the community.

This submission limits largely itself to direct land property transactions. Silence on other parts of the exposure draft should not be construed as agreement.

ECG Makes the following Submissions, Recommendations and Suggestions

1. Clarification of Purpose

The ECG acknowledges that the purpose of expanding third party data reporting is to track the transfer of real property in order to ensure compliance by vendors of any income tax, capital gains tax and goods and services tax arising from those transactions. The ECG understands that one of the primary purposes of the data collected from the proposed 3rd party reporting will be to enable the Australian Taxation Office (ATO) to populate taxpayers MyGov website pre-filling service. This is intended to assist taxpayers and their tax agents more accurately complete their tax returns. Simplifying the compliance process is expected to ensure greater and more accurate taxpayer compliance. .

2. Identification of the Entities from which Data is Sought

It remains unclear to the ECG which government or semi government entity, in each State and Territory, will be the reporter(s) under the new regime. At this point in

time there is considerable diversity and inconsistency in the format of collected data by land registries and State revenue offices (or their equivalent) in each jurisdiction.

3. Timing of Implementation

It is the experience of the ECG, having worked through change and harmonisation of processes associated with electronic conveyancing, that there is unlikely to be a successful or satisfactory implementation within in the prescribed period. The ECG suggests that the only way that the ATO can realistically expect to receive the data in electronic form from the existing entities is if it accepts the data in the form in which it is currently held by those entities and translates that data itself into a common format that the ATO use. The ECG suspects that the ATO will be unable to be in a position to use this data by 30 June 2016 unless it has or is already in the process of developing its own means of translating that data and it is prepared to accept less than optimal quality, formatting and, totality and timing of the reported data. In ECG's experience, changes to electronic systems are difficult and require very careful and considered planning if they are to be effective, satisfactory and cost effective. There are plenty of examples where this has not been the case both in the public and private sectors. The ECG considers that it is unrealistic to expect the States and Territories to each make changes to their systems in an unrealistic time frame especially when the State and Territory entities' systems are generally the ones on which the States and Territories are most critically dependent for the revenue raised from their own taxes.

Furthermore, the ECG is concerned that forcing the States and Territories into providing the data when they are not ready will either: (a) have incorrect, or inappropriate data being provided; or (b) delay its receipt; or (c) result in the States and Territories seeking to pass on their obligations to industry, notwithstanding that the States and Territories hold the data. This results in an inefficient duplication of processes and fragmentation of the quality of the data.

One item the ECG wishes to emphasise is that the majority of land registries, other than Queensland, do not recognise or record the existence of trusts on the register. By way of example ABC Pty Ltd may be recorded as the registered proprietor of a parcel of land, but that could be ABC Pty Ltd in its capacity as the legal owner, it could be ABC Pty Ltd in its capacity as the trustee of a discretionary trust, or it could be ABC Pty Ltd in its capacity as the trustee of a self-managed superannuation fund. Therefore the ECG is unsure as to how information as to beneficial ownership is intended to be sourced.

4. The Data that is required

Schedule A – Third Party Collection Data Form

There is little discussion regarding the data sought to be collected or the reason for it. The form has been drafted on the assumption that the reported has all the

information. At present, no one entity or transaction party would have all the information in the form and in particular, not in that format or in that order. The following brief comments are mere observations that require further discussion.

Unique Transaction ID

There are currently no unique transaction identifiers other than the registration number which is generated by the land registry on registration. It comes at the end of the process and is generally only known by the land registry and the purchaser's financier. It is not information that would generally be known by the State Revenue Office (or its equivalent) or by the vendor's lawyer or licensed conveyancer (practitioner).

Transferors' details

There is data fields in the form that is not currently captured by State Revenue Offices (or their equivalent) or not captured directly. The ECG queries if all of it is necessary.

Ownership details

Dates of birth have only started to be captured in the last few years, and only those of purchasers. The dates of birth of existing owners is likely to be unknown to land registries and revenue offices except for those land owners who have acquired property in the last few years.

Property Identification Details

The ECG presumes that only the data that is necessary for the processing of the transfer transaction would need to be supplied because locating all the information for all the fields would be extremely onerous.

The suggested land use codes are probably not currently used in any jurisdiction and are inconsistent with what the states and territories currently use. However, the ECG would support a sensible review all jurisdictions codes with the purposes of simplification and national standardization.

The ECG is not aware that the indicators are used consistently across jurisdictions.

Many jurisdictions do not distinguish between plans of subdivision and plans of consolidation (or plans for other purposes).

Transfer details

There is confusion regarding the consideration provisions which require reporting up to 3 times. The market value will normally be the arms length consideration. The

transfer date is generally irrelevant and is generally only significant to the land registry.

5. Tax File Numbers

At present, lawyers and licensed conveyancers (practitioners) are not authorized to require their client's tax file numbers (TFN) or the TFNs of any other party to the transaction without the taxpayer's explicit consent.

The need for lawyers and licensed conveyancers to acquire the parties' TFNs generally only arises in limited circumstances. Those circumstances are:

Investment of the deposit on a typical dwelling sale

Generally the deposit is paid to by the purchaser to the vendor's estate agent as: stakeholder, as agent for the vendor or as agent for the purchaser, depending on the jurisdiction and the circumstances of the transaction. In most jurisdictions the estate agent is required to pay the money into his or her trust account which is regulated by the estate agent's statutory regulator. Depending on the jurisdiction, interest may or may not be derived on any funds invested. In any event, in the recent decade or so, low interest rates have meant that the investment into special trust accounts in order to derive interest is not cost effective for short term settlements after deducting fees and the cost of setting up and closing the special account.

Sometimes, and in some jurisdictions, the deposit or part of it is paid to a lawyer or licensed conveyancer either directly by the purchaser or by the vendor's estate agent. This may occur where the settlement date is further from the contract date, the deposit is large enough to warrant special investment arrangements or the deposit is required to effect the complete the settlement. For example, where the funds are required for a subsequent or concurrent settlement, or all the proceeds of the sale are required to discharge the mortgage secured on the vendor's title.

The same or similar requirements and practises regarding deposits apply to practitioners as apply to estate agents, other than in some jurisdictions practitioners may have a greater ability to invest money on behalf of their clients. However, in most cases, interest is not derived for any party.

Larger transactions or longer term settlements

Circa 1989-90 interest rates were considerably higher than at present and the ATO consulted with the Law Council of Australia to develop workable practical procedures for the then New TFN Arrangements Stage 2. The procedures were designed to simplify the circumstances where practitioners set up special trust accounts for investments of deposits on behalf of parties in circumstances where there was a long term settlement or the sale was conditional on events and it may be uncertain which party would receive the interest on the deposit. For example, if

the contract was subject to the purchase obtaining finance approval or if the vendor remained concerned that the purchaser may default.

The purpose of the arrangement was to avoid the necessity of the practitioner preparing a special one off trustee tax return for relatively small one off transactions while ensuring compliance. The arrangement required the practitioner to quote the TFN of the party entitled, or both parties if they shared the interest or if it was uncertain to whom would become entitled to the interest at settlement, when opening the special interest bearing trust account.

Many vendors and purchasers do not have TFNs. For example, many elderly people of those who are young, or others such as executors and trustees of estates that do not derive income.

6. Off the Plan Sales.

Typically off the plan sales require that the deposit is held for longer periods by an independent party (usually the developer's lawyer or conveyancer) while the building is being constructed. In many cases, the contract may provide that the interest is paid to the developer.

7. Practical Issues

The ECG also notes that if in the case of information being sourced from land registries, or revenue offices, that subsequent legislative changes may need to be made to a legal requirement for the supply of the information and by each of the various States and Territories in order to for them to compel the production of additional data from the taxpayers that is not currently required.

The ECG's involvement with electronic conveyancing has indicated that different jurisdiction will take different approaches, and the ECG is quite concerned that jurisdictionally idiosyncratic approaches are not taken, or, to put it another way, that the obligations on a taxpayer to provide information in one state, should not be markedly different to the obligation of the taxpayer in another. A detailed working party should be established to oversight the development of legislation in the various states and territories to look at legislative and procedural changes that will be required at the registry level to implement the standardization of the required data.

A fundamental question that would need to be considered by each of those registries is whether information is to be required in the registration process, usually in the design and format of the transfer of real property form, or whether the information is going to be required by way of a notice of acquisition or sale provision, and if so whether the style and format of the same can be standardised nationally.

8. Application of the New Measure to Trustee of Units in Unit Trusts

The compliance obligations and reporting requirements for the trustees of unit trusts are extensive. The ECG is concerned that the compliance obligations for the trustees of smaller unit trusts will be difficult, and potentially involves significant compliance costs. The issue of unit trusts as a structure of the operation of small or medium businesses is not unusual and the ECG is concerned that the benefits of pre-filling data may well be outweighed by the administrative and financial costs of trustees in those circumstances. It notes that the trustees of unit trusts appear to be expected to comply with the same level of reporting obligation that applies to what are otherwise publicly funded government entities, or larger corporate parties in a case of electronic business transactions. It is the view of the ECG that the trustees of unit trusts, should be removed from the reporting obligations.

RECOMMENDATIONS

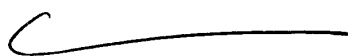
The ECG does not support the additional compliance burden of TFN collection, and would recommend that this task should remain with an existing state or territory agency. The ECG recommends that the data to be collected is limited as much as possible and does not include additional data which will require additional reporting by industry either to the ATO or to the State and Territories.

SUMMARY

The ECG has welcomed the opportunity to assist Treasury and the ATO to design an adequate solution to improve tax compliance and looks forward to further engagement to ensure the development of a flawless system.

The ECG is also willing to provide representation on a working group which will deal with the training and communications essential to the success of any major process change.

Yours sincerely



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Chair

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The collaborative voice of

Australian Bankers' Association, Australian Institute of Conveyancers, Law Council of Australia