

National Australia Bank Limited Submission

Exposure Draft: *Tax and
Superannuation Laws Amendment
(2015 Measures No. 5) Bill 2015:
Third party reporting*

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1. Summary of Key Concerns & Recommendations

National Australia Bank (NAB) is pleased to have the opportunity to provide feedback to Treasury on the Exposure Draft issued to amend the Tax Administration Act to introduce Division 396 Third Party Reporting.

NAB fully supports policy changes aimed at improving tax compliance and making tax return processes simpler for taxpayers, especially Australian small businesses. To this end, included in NAB's submission to the Tax Reform Discussion¹ paper were various recommendations for the ATO and banks to work together to harness current and emerging technology to eliminate or simplify the requirements for Individuals and Small to Medium Enterprises to lodge income tax returns and Business Activity Statements.

However, NAB has a number of key concerns in relation to the proposed third party reporting regime which are:

- the implementation timeframe for the new policy measures,
- the lack of an overall architecture for these measures given other tax reporting changes; and
- the broad scope of the exposure draft legislation.

Each of the above concerns is briefly summarised below along with NAB's recommendations to alleviate these concerns².

Implementation timeframe for the new policy measures

The proposed new measures impact many facets of the NAB Group including key business activities outlined in the table below:

NAB Business / Product	Reporter per s396-55	Reporting requirements
<ul style="list-style-type: none"> • Trading services 	Australian Financial Market Participant (Broker) (Item 5)	<ul style="list-style-type: none"> • Customer identity information
<ul style="list-style-type: none"> • Off market share transactions 	Listed company (Item 6)	<ul style="list-style-type: none"> • Off-market transactions • Corporate Event Transactions • Holder identify information
<ul style="list-style-type: none"> • Custodian Services • Registry services unlisted entities 	Custodian and registry services (Items 7 and 8)	<ul style="list-style-type: none"> • Customer identity information • Share and unit buy / sell transactions • Corporate event information
<ul style="list-style-type: none"> • Investor Directed Portfolio Service (IDPS) • Managed Funds • Separately Managed Accounts • High Net Wealth, • Insurance & Compensation trusts 	Trustees of units and non unit trusts (Items 7 and 8)	<ul style="list-style-type: none"> • Customer identity information • Buy / sell transactions • Corporate event information
<ul style="list-style-type: none"> • Merchant and BPay facilities 	Payment System Administrator (Item 9)	<ul style="list-style-type: none"> • Electronic payment transactions • Merchant identification details

These business activities are undertaken by different entities within the group with different data capture systems. The new reporting regime will require NAB to make significant system changes,

¹ NAB Submission, Re:think Tax Discussion Paper, June 2015

² NAB notes that many of the concerns are also shared by many other affected taxpayers.

build new reporting functionality and implement governance/ processes to comply with the new reporting requirements across multiple systems.

At the same time, NAB is at various stages of addressing and managing other significant regulatory change obligations emanating from various government agencies including APRA; ASIC; ATO, AUSTRAC and other foreign regulators.³

Given the significant work and investment required to implement the new regime without the benefit of finalised legislation and ATO practice; and the existing regulatory change projects underway (see footnote 3 below), it is very unlikely that NAB will be able to meet the proposed start date of 1 July 2016 for the new reporting requirements. Importantly, in order to undertake such a significant change project work and make such significant investment, NAB needs final legislative rules and administrative practice in order to a) adequately scope out required changes b) seek approval for a large investment spend amongst competing regulatory priorities and c) at least an 18 month timeframe in order to implement the changes (eg changes to complex systems take time and typically can only be done through set time windows).

As such, NAB recommends a deferral of the commencement date to provide reporters with an appropriate timeframe to modify systems and develop processes to comply with the new requirements and allow an orderly transition into increased frequency of reporting.

Lack of an overall architecture for these measures given other tax reporting changes

Further, NAB believes that the underlying architecture of the proposed regime should be subject to a rethink. That is, Treasury, ATO and industry should undertake a holistic, comprehensive and strategic review of all current and emerging Australian tax reporting requirements. Such a review would lead to the ATO and impacted taxpayers being able to develop sustainable and holistic architecture, systems, processes and governance which would cater for all current and emerging tax reporting data requirements and significantly cut red tape and compliance cost. This is especially pertinent in a rapidly changing digitised world. The risk underlying the current stand alone third party regime is that separate architecture, systems etc will need to be developed which may not be “fit for service” for other current or emerging reporting regimes leading to duplicated and unnecessary cost.

As such, NAB recommends that the Treasury and ATO work with industry and other government agencies to develop a “whole of Government view” in respect of both current and proposed tax reporting requirements to achieve a sustainable and holistic architecture which would readily facilitate new reporting requirements.

Broad scope of the exposure draft legislation

NAB notes that the Exposure Draft has been broadly written with the intention of future proofing and encapsulating all current and future transactions and entities. In this regard, the objective to avoid future legislative change must be balanced with providing certainty for reporters and the ATO alike in complying with the law for both current and new products and transactions offerings.

To alleviate this concern NAB recommends that clarity of legislative scope be provided in the final legislation so as to avoid uncertainty.

³ These include FATCA, AUSTRAC Foreign Fighter Initiative, New Payments Platform, BASEL III, CRS, RBA review into Credit Card interchange Fees, BASEL IV, Country By Country Reporting, Managed Investment Trust reforms, Enhanced Pillar 3 Disclosures, AUSTRAC Customer Due Diligence Rules, AUSTRAC data acquisition, AUSTRAC IFTI Reporting, FOFA Reforms, Standard Business Reporting, Review of Australia’s AML/CTF Regime, Stronger Super Reforms, and Single Touch Payroll.

NAB's Key Concerns and Recommendations are discussed in more detail below.

2. Scope of Legislation

The draft legislation is broadly drafted and as such covers a range of transactions and securities that the ATO have advised through the consultation process would likely fall out of scope. The legislation provides for the Commissioner to grant exceptions for particular reporting entities by way of legislative instrument or specific Commissioner discretion. However, it is currently unclear how these exemptions will apply which creates uncertainty for reporters not just in complying with the new regime but also in assessing the impact of the reporting requirements for future products / business offerings. It would be impractical and costly for reporters to have to seek a specific exemption or new legislative instrument for new products due to the broad scope of the current legislation.

Clarity could be achieved by legislating specific exclusions for entity and security types in Subdivision 396-B to align with the stated policy intent of simplifying tax return processes and enhancing compliance for entities where greatest risk arises. The existing exemptions could be retained for reporters / transactions which fall outside of the general exemptions.

NAB Recommendations

The draft legislation incorporate specific exclusions for the following:

General exclusions

- 1) Entities reporting on transactions other than a transaction involving individuals, family trusts and small businesses (as defined by section 328.110 in ITAA 1997). This limits reporting requirements to align with the stated policy intent to simplify tax compliance for individuals.
- 2) Any transaction which will be included in the report of another reporter. This will ensure that duplicate reporting for the same transaction is avoided.

Trustees

- 1) A security trust holding the underlying asset as collateral where the beneficiary has absolute entitlement to the asset (e.g. Division 235 instalment trusts). This will align reporting requirements for instalment trusts with the requirements in Subdivision 393 of the Tax Administration Act.
- 2) Reporting entities that are interposed through a chain of reporting entities to the extent that:
 - i) It is an entity interposed between the transacting participant and another entity with a reporting obligation under this division; and
 - ii) the interposed entity provides the name and identification information of the transacting participant to the other entity; and
 - iii) the other entity will report the transaction with the details of the transacting participant and not the intermediate entity.

This will ensure that only one investment entity in a change of entities will report and will avoid duplication of unreconcilable data which will provide challenges for the pre-fill objective. This solution will be particularly relevant for Investor Directed Portfolio Service (IDPS) platforms.

Payment System Administrators

- 1) Transactions of Financial Services entities involving wholesale payment arrangements. In this instance, the wholesale counterparty would report rather than the primary Financial Services entity, avoiding information duplication.
- 2) Other forms of electronic payment that are not primarily related to a Small Business sale transaction should be excluded under the legislation as the ATO have stated through consultation that they do not intend to capture all transactions relating to a business account or large business transactions where compliance risks are lower.

3. Tax reporting architecture

As noted above, there are a number of regulatory reforms either in process or proposed which will impact tax data reporting. NAB believes it is important to have a clearly defined reporting framework which will enable reporters and the ATO alike to best manage tax reporting requirements across multiple obligations. This will enable reporters to build systems and processes not just for the current regime but also with an understanding of future requirements, enabling a more nimble response in accommodating future changes and a reduction in ongoing compliance costs.

NAB Recommendations

NAB recommends that the Treasury and ATO work with industry and other government agencies to develop a “whole of Government view” in respect of both current and proposed tax reporting requirements, along with target state reporting architecture. This will allow reporters to appropriately plan and manage change requirements to address tax reporting and compliance obligations.

4. Commencement date

The proposed law is intended to apply from 1 July 2016 which will provide NAB with insufficient time to commence their system modifications to accommodate the new law. For projects of this change magnitude, NAB would require at least 18 months to implement change requirements. Moreover, such project investment can only be initiated once the relevant rules are certain so as to avoid wastage, disruption to BAU activities and diversion of resource from other regulatory projects.

NAB Recommendation

NAB requests that the commencement of the reporting obligation should commence at least 18 months after the ATO have issued the final electronic specifications.

5. Timing of reporting

Section 396-55 of the draft legislation requires lodgement of the report within 31 days after the end of the reporting period to enable information to be used for pre-filing purposes. However, reporting of investment earnings through the AIIR has a due date of 31 October, with this information unable in many instances to be used to pre fill returns which also have a due date of 31 October.

For the AIIR, large reporters seek to submit simple investment earnings information such as interest and dividends early to support pre-fill functionality for their customers. However, for certain managed funds, where there is a chain of reporting, early submission is often not possible and the AIIR cannot be prepared until information from all entities in the chain is received and appropriately processed by the reporter.

NAB Recommendation

NAB recommends that reporting requirements for the sale of Shares & Units for Trust transactions is aligned with current AIIR reporting requirements (eg 31 October following the end of the fiscal year).

NAB also recommends that reporting requirements for the sale of Share and Units for non Trust transactions be extended beyond 31 July as this date is likely to be very difficult to meet as previously communicated in the first round of industry consultation.

However, NAB also recommends that a two phase reporting deadline is implemented with an earlier reporting deadline for listed entities which provide details of corporate actions and off market transactions, as well as reporting for on market listed security trade transactions. If such transactions have an earlier reporting date than Trust transactions, this should help reporters relying on data from these entities, to meet their own reporting deadlines.

6. Frequency of reporting

NAB understands that the new reporting requirements will be applied, initially, on an annual basis. However, section 396-55 of the current draft law enables the ATO to change the frequency of reporting at any point in time.

In modifying systems to accommodate the new law, reporters need to understand what the target state will be for future reporting so they can work toward this position without incurring additional compliance costs to address subsequent changes (refer also recommendation 3).

NAB Recommendations

The ATO should provide clear information for the target state reporting frequency along with technical specifications so reporters can look to work this into their system changes.

Further, NAB recommends that the right to select a more frequent reporting period must only commence after 1 July 2020 once the Commissioner has consulted with the industry. This will allow industry time to embed the new reporting processes and iron out any issues before dealing with more frequent reporting requirements.

7. Mandatory Data fields

The draft data specifications released by the ATO indicate that certain data fields have a mandatory reporting requirement. Some of the information in the draft data specification is new information that reporters may not currently capture for reporting to any regulator.

NAB Recommendation

Any mandatory requirements should be prospective and not require reporters to seek to back-fill any data gaps as this would be a very costly and time intensive exercise.

8. Errors & Penalties

Despite good governance, systems and process, errors may still occur in reporting. Errors in reporting could be due to a breakdown of internal processes or errors from external parties.

To this end, the legislation does not specifically deal with errors in reporting or any penalties for an inaccurate report.

NAB Recommendations

NAB proposes that material errors in reports are dealt with consistently with existing provisions for AIRR reports contained in s393-15 of Schedule 1 of the Tax Administration Act. This will enable reporting entities to correct errors via the lodgement of revised reports within 28 days of identifying a material error within a report.

Further, NAB recommends that correcting reports can occur without application of a shortfall penalty relating to the provision of false and misleading information to the ATO. Alternatively, NAB recommends that a cap is placed on any non-shortfall penalty for report errors, so as to ensure that there is no disparity in treatment of small and larger reporters.