

24 April 2013

Mr Gerry Antioch
General manager Tax System Division
The Treasury
Langton Crescent
PARKES ACT 2600

taxtransparency@treasury.gov.au

Dear Mr Antioch,

Improving the transparency of Australia's business tax system

The Group of 100 (G100) is an organisation of chief financial officers from Australia's largest business enterprises with the purpose of advancing Australia's financial competitiveness.

The G100 is pleased to provide comments on Treasury's Discussion Paper of 3 April 2013 titled "*Improving the transparency of Australia's business tax system*" (Discussion Paper) with a focus on the proposal for public disclosure of the income taxes and resource taxes paid by large and multinational businesses (covered in section 2 of the Discussion Paper) (Reporting Proposal).

The G100 is concerned that the Reporting Proposal has the potential to misrepresent the affairs of affected businesses and mislead the public. Consequently, the G100 considers that there is a significant risk of reputational damage even for taxpayers with excellent compliance history and a conservative approach to tax risk.

The G100 considers that the Reporting Proposal will not achieve the objective stated in the Assistant Treasurer's foreword to the Discussion Paper, being:

"This will encourage enterprises to pay their fair share of tax and discourage aggressive tax minimisation practices."

nor the objective of this proposal as stated on page 5 of the Discussion Paper (and repeated below):

"The objective of this proposal is to enable the public to better understand the corporate tax system and engage in tax policy debates, as well as to discourage aggressive tax minimisation practices by large corporate entities."

Australia's publicly listed companies already make extensive disclosures of their taxation liabilities, while proprietary companies make tax disclosures in their financial reports which are also on the public record (other than for exempt proprietary companies which are outside the scope of the Reporting Proposal in any event). This includes subsidiaries of foreign owned groups.

The G100 is concerned that the Reporting Proposal creates inappropriate new risks for many Australian companies and will introduce additional costs.

By way of example, any company which has:

- low profitability to revenue ratios (for reasons including competitive markets, industry structure, and / or the volatile domestic and global economy);
- low taxable income to revenue ratios (for reasons including legitimate capital allowances, research and development tax concessions, exempt foreign income, tax losses and tax timing differences);
- differences between the cash tax payable in Australia in a year and its current tax liability reported in its financial statements (for reasons including tax timing differences, instalment payment differences and taxes payable in Australia as distinct from taxes paid globally); and / or
- the recognition of accounting gains and losses on unrealised positions;

will likely need to invest time and incur expenditure to prepare public disclosures explaining its position to mitigate the risk of adverse media reporting and/or inappropriate conclusions being reached by the general public. Consequently, it is likely that the Reporting Proposal will impose an additional new burden on impacted companies.

In many cases taxpayers will be required to “defend” themselves where tax outcomes reported are a direct consequence of considered and well understood tax policy decisions that have been taken by successive governments. For example, the greater the scale and profitability of foreign operations an Australian based multinational has, the greater the likelihood that an unfair inference may be drawn from the Reporting Proposal. This could in effect penalise successful Australian based companies.

The G100 is of the view that the Reporting Proposal will do little to increase public awareness of the role of business and tax policy. Treasury currently publishes an annual Tax Expenditure Statement covering many concessions. The Australian Taxation Offices (ATO) currently publishes extensive taxation statistics about businesses and large and small companies. The ATO already receives significant amounts of data relating to companies from their income tax returns, their International Dealings Schedules, ATO risk assessment statistics and industry profitability assessments. The G100 considers that this data has the capacity to facilitate more meaningful debate than information that can easily be misunderstood without appropriate context.

In the view of the G100, the desired outcomes of the Reporting Proposal:

- will not outweigh the likely significant associated costs and potential inappropriate detrimental impacts on business reputations;
- risks diverting public attention from the major task ahead of developing 21st century rules for the taxation of international business as identified by the Organisation of Economic Co-Operation and Development (OECD), G20 and G8; and
- will likely confuse the tax policy debate.

If the government is determined to proceed with the Reporting Proposal then the G100 considers that there should be, at most, a very limited trial, with significant modifications as discussed below. This would allow for a proper impact analysis and the development of appropriate measures to mitigate inappropriate detrimental impacts.

SPECIFIC COMMENTS ON THE APPROPRIATENESS OF THE REPORTING PROPOSAL

i) **The G100 considers that whilst the public concerns being discussed may have some basis there is not a widespread issue**

Large businesses are extremely transparent to the ATO. Mark Konza, Deputy Commissioner, Large Business and International, expressed the following view in a recent speech:

"approximately 800 (representing 55% of company tax) [large companies] we have no current concerns about."

In this same speech the Deputy Commissioner also highlighted the ATO's initiatives in respect of the large business sector, namely implementing pre-lodgement compliance reviews and the reportable tax position schedule.

Consistent with the ATO's assessment of large companies, the G100 considers that the ATO's current initiatives, and future enhancements, are a more appropriate mechanism to discouraging aggressive tax minimisation practices.

The G100 considers that subjecting all of its members to the Reporting Proposal demonstrates that the proposal is being applied indiscriminately to taxpayers for whom it is accepted that there is no issue.

ii) **The Reporting Proposal is contrary to multilateral action and may harm Australia's attractiveness**

The OECD Report on *Addressing Base Erosion and Profit Shifting* does not identify a lack of public disclosure of company income tax as a deficiency in tax systems. Further, such public disclosure has not been recommended as a reform or corrective action.

The G100 is concerned that, given the likelihood of inappropriate inferences being drawn from the Reporting Proposal, Australia may become less attractive as an investment destination. In particular, absent extensive context to explain the published data, limited (if any) conclusions would be reached.

iii) **The Reporting Proposal will not achieve the policy objectives**

The G100 understands that the desired outcomes of the Reporting Proposal are to enable the public to better understand the corporate and resource tax system and engage in tax policy debates and to discourage aggressive tax minimisation practices.

The G100 considers that the current proposal will not advance the public policy debate and will not improve the process for achieving reforms by multilateral forums given the potential for the Reporting Proposal to mislead the general public.

iv) **Improving ATO statistics and tax research**

The G100 considers that the collection, analysis and evaluation of more detailed data against a wide range of criteria is a more appropriate approach to advancing public debate on whether taxpayers are paying a fair share of income tax.

The ATO already produces extensive statistical analysis on corporate income tax which is currently available to the public. The G100 considers that there could be greater analysis of the ATO statistics and greater disclosures of some existing ATO analysis that is undertaken, but not currently publicised. By way of example, the ATO could release:

- aggregate data from the international dealings schedule;
- data collected and used in the ATO risk differentiation framework and the determination of "risk ratings"; and
- comparable corporate tax data and industry data used by the ATO.

The G100 considers that these would be far more productive actions to enrich the quality of tax policy debate.

ADDITIONAL COMMENTS IF THE GOVERNMENT IS DETERMINED TO PROCEED WITH THE REPORTING PROPOSAL

These comments are made because the G100 has concerns that the Reporting Proposal will lead to inadequately researched and superficial public campaigns directed not just at foreign owned multinational companies but also large Australian companies.

i) Problems with disclosing total income

The G100 submits that there should be no disclosure of a company's total income. Total income as a disclosure item is likely to be misleading. Disclosure of total income does nothing to inform the general public as, in general, total income will not reflect the profitability of the company.

To have information relating to total income and taxable income reported without any further information being available invites potential reputational damage. This is particularly the case for businesses facing pressure on profit margins.

By way of example, the following matters could result in misleading perceptions and the potential for a company's reputation to be tarnished:

- taxable income may be reduced by legitimate carry forward tax losses resulting in a perception that taxable income is low compared to total income;
- franking credits are included in taxable income, but would not be included in total income;
- total income may include foreign income not subject to Australian income tax, such as exempt dividends received from foreign subsidiaries; and
- companies with large capex will have capital allowance deductions which will reduce taxable income, resulting in a perception that taxable income is low compared to total income.

For these reasons, the G100 is concerned about the prospect of inappropriate inferences being drawn from the reporting of total income and considers that it should not be disclosed.

ii) Problems with the disclosure of income tax payable

The G100 considers that any disclosure of income tax payable should be based on gross income tax payable excluding the impact of tax offsets. This is suggested because offsets provided under taxation laws which reduce tax payable should not be a basis for taxpayers being considered as not paying an appropriate amount of income tax. There is a likelihood that this misconception may otherwise arise.

Any disclosure of income tax payable should not be the final amount due and payable by a company as this may allow inappropriate conclusions to be drawn.

iii) More appropriate total income threshold

The threshold for any reporting should be aligned to the threshold with the ATO's Large Business and International segment threshold for companies with annual turnover exceeding \$250 million.

iv) Opportunity for review

The G100 anticipates that potential disclosures for many companies will require further explanation to provide context. The G100 considers that affected companies must be given a right to review the proposed disclosure as well as the option of providing explanations.

v) No paper publication, list or table of the entities should be made available by the ATO

The G100 considers that the Reporting Proposal should not be available in the form of a paper publication by the ATO and should not list the entities (or be capable of being made into a list).

The reasons for this are:

- the likely affected entities will be from differing industries and have differing economic profiles such that a comparison exercise is futile;
- even those companies in the same industry may have significant variances in the published data for entirely legitimate reasons; and
- the media and public may misconstrue a company listed with an apparent low taxable income or tax payable of less than the corporate rate as a company that is irresponsible despite the ATO recognising the company as being a responsible taxpayer.

vi) MRRT and PRRT taxpayers

To ensure that a more complete picture of obligations on taxpayers is disclosed, the G100 considers that any reporting by a MRRT/PRRT taxpayer must include a disclosure of all state royalties paid by the taxpayer.

vii) A limited program should be considered

The G100 strongly recommends the government consider a very limited program to trial the Reporting Proposal. This would allow for a proper impact analysis and the development of appropriate measures to mitigate inappropriate detrimental impacts.

The G100 trusts that the comments provided herein are of assistance.

Should any further information or clarification be required, please do not hesitate to contact Peter Meehan (peter_meehan@bigpond.com T/p 0417 509 022).

Yours sincerely

Group of 100 Inc

A handwritten signature in blue ink, appearing to read 'Terry Bowen', is written over a large, light blue circular scribble.

Terry Bowen
President