



Deloitte Touche Tohmatsu  
ABN 74 490 121 060

Grosvenor Place  
225 George Street  
Sydney NSW 2000  
PO Box N250 Grosvenor Place  
Sydney NSW 1217 Australia

Tel: +61 (0) 2 9322 7000  
Fax: +61 (0) 2 9322 7001  
www.deloitte.com.au

**By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)**

Committee Secretary  
Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

30 January 2015

Dear Dr Dermody

**Re: Inquiry into corporate tax avoidance and minimisation**

Deloitte is pleased to make this submission in respect of the Inquiry into corporate tax avoidance and minimisation (the Inquiry) by the Senate Standing Committees on Economics (the Committee).

We play a vital role in ensuring that our clients understand and comply with the law. We have a significant responsibility as both a major tax adviser and a key stakeholder in respect of the taxation system and accordingly, we welcome the opportunity to comment on key aspects of the Inquiry's terms of reference.

The key points that we would like to make as part of this submission include the following:

- We consider that the current Australian corporate tax system is robust and comprehensive, is administered by a capable and respected tax authority and generates a high degree of voluntary compliance.
- However that is not to suggest that the Australian tax system requires no review or improvement. Recent concerns expressed by the OECD and various governments globally regarding base erosion and profit shifting (BEPS) are valid and appropriate. Changes are required to modernise and strengthen international tax rules.
- Deloitte supports the OECD BEPS related work as an important opportunity to modernise international tax rules and create a more coherent and sustainable global tax system. BEPS is an international issue that needs to be handled on a multilateral basis – Australia should not go it alone

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- However in seeking to reform and improve the wider Australian taxation system, we believe that it is important to appreciate the strengths of the current corporate tax system that has already been the subject of extensive review by both previous and current Governments. Australia has strong anti-avoidance and transfer pricing regimes and as noted, a tax administrator which is effective and pro-active.
- Deloitte also welcomes the wider public debate on tax reform within Australia and will continue to participate in the process for the development of the Government's Tax Reform White Paper, as we have done for previous Governments' tax reviews.
- In principle, Deloitte supports greater transparency about taxation. We note that certain tax transparency measures have already been enacted in Australia and that the Australian Government has also recently endorsed further international measures which seek to increase such transparency.

These points are considered in further detail in the attached annexure.

We believe that the effectiveness of both the Australian tax system and the Australian Taxation Office (ATO) has an impact on all Australians, so it is important that these issues are considered and discussed in detail.

Yours faithfully

**Paul Riley**  
Managing Partner, Tax

**David Watkins**  
Partner, Tax

## Annexure

### a) The adequacy of Australia's current laws

#### i) Robust domestic tax law regime with strong integrity measures

In his Ministerial Statement on 4 September 2014, the Treasurer, The Hon Joe Hockey MP, outlined the integrity measures which are part of Australian domestic tax law:

*"Australia has a robust and sophisticated set of laws that deal with aggressive tax planning and international profit-shifting. They ensure that our tax system has integrity. These laws include specific provisions covering transfer pricing rules, thin capitalisation rules, controlled foreign company rules and general anti-avoidance rules. I am advised that they are amongst the strongest anti-avoidance laws in the world. But the Government is acutely aware of the need to stay alert to constant changes in financial arrangements used for tax minimisation across the global economy."*<sup>1</sup>  
(emphasis added)

Each of these integrity measures, that is, the general anti-avoidance, transfer pricing, thin capitalisation and controlled foreign company (CFC) rules have recently been the subject of review and consultation by both previous and current Federal Governments. In recent years, amendments have been made to further strengthen the general anti-avoidance, transfer pricing, thin capitalisation rules. Proposals to relax some aspects of the rigorous CFC rules are not proceeding.

#### General anti-avoidance

The **general anti-avoidance provisions**, which Deloitte regards as being of central importance to the operation of Australia's tax system<sup>2</sup>, were the subject of a review announced in the 2009-10 Federal Budget by the previous Government.<sup>3</sup> Following the release of a discussion paper for consultation in November 2010<sup>4</sup>, the previous Government introduced amendments<sup>5</sup> which were enacted in 2013 to address uncertainties and perceived deficiencies regarding the application and operation of the general anti-avoidance rules. In the second reading speech at the time of introduction of these amendments into Parliament, the then Assistant Treasurer and Minister Assisting for Deregulation, David Bradbury said:

*"This bill amends the income tax law to protect the integrity of Australia's income tax system. These reforms come forward at a time of unprecedented global recognition that base erosion and profit shifting must be addressed."*

*Last night, the OECD released its latest report on Addressing Base Erosion and Profit Shifting, which identified modern transfer pricing rules and effective anti-avoidance rules as two of the key weapons in the fight against base erosion and profit shifting.*

*As the OECD report says, 'What is at stake is the integrity of the corporate income tax.'*

<sup>1</sup> The Hon Joe Hockey MP, [Ministerial Statement on G20-OECD Tax and Transparency](#), 4 September 2014 (Treasurer's Ministerial Statement, 4 September 2014): "International cooperation, of course, complements both our robust domestic laws and our administrative efforts to counter international tax avoidance."

<sup>2</sup> Deloitte submission to Treasury, "Improving the operation of the anti-avoidance provisions in the income tax law", 8 March 2011.

<sup>3</sup> The then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs Chris Bowen Media Release, [Government acts to reduce compliance costs and improve the tax law](#), 12 May 2009

<sup>4</sup> [Improving the operation of the anti-avoidance provisions in the income tax law](#), Discussion paper, 18 November 2010

<sup>5</sup> Schedule 1, [Tax Laws Amendment \(Countering Tax Avoidance and Multinational Profit Shifting\) Act 2013](#)

*The government is committed to taking steps where necessary to ensure the integrity and sustainability of the tax system.*

*Without these amendments, significant amounts of revenue that should be available for the benefit of all Australians would be at risk of not being collected. ...*

*These amendments [to Part IVA] have been through an extensive consultation process. In addition to the government's usual public consultation on draft legislation, the design process included a lengthy series of consultations with a round table of academic, legal and tax experts, and advice from a number of senior counsel.*

*As a result, the government is confident that these amendments will ensure that part IVA properly protects the integrity of the tax law without unnecessarily interfering with taxpayers' normal commercial activities."<sup>6</sup> (emphasis added)*

## *Transfer Pricing*

In the same Bill<sup>7</sup>, revised and strengthened **transfer pricing rules** were introduced by the previous Government to modernise Australia's transfer pricing landscape and bring them into line with more recent OECD transfer pricing guidance. During the second reading speech at the time of introduction into Parliament of these amendments to the transfer pricing rules, the then Assistant Treasurer and Minister Assisting for Deregulation, David Bradbury said:

*Schedule 2 to this bill modernises Australia's transfer pricing rules in accordance with the government's announcement in November 2011. It provides a new, comprehensive and robust transfer pricing regime that is aligned with internationally accepted principles.*

*The transfer pricing rules are critical to the integrity of the tax system. They ensure that an appropriate return for the contribution of Australian operations of a multinational group is taxable in Australia for the benefit of the broader Australian community. ...*

*The measures contained in this bill are vital for maintaining the integrity of the Australian income tax system."<sup>8</sup>*

These amendments to both the general anti-avoidance provisions and the transfer pricing rules were enacted and became law in June 2013.

At the Senate Economics Legislation Committee Estimates hearing on 22 October 2014, ATO Second Commissioner Andrew Mills said that because of these changes, Australia has "probably the strongest anti-avoidance and transfer pricing rules in the world."<sup>9</sup>

## *Thin capitalisation*

Amendments were enacted in 2014 to tighten the **thin capitalisation rules**<sup>10</sup>. These amendments were announced by the previous Government in the 2013-14 Federal Budget<sup>11</sup> and the Treasurer and the then

<sup>6</sup> [Second reading speech](#), Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013, the then Assistant Treasurer and Minister Assisting for Deregulation, David Bradbury, 13 February 2013

<sup>7</sup> Schedule 2, [Tax Laws Amendment \(Countering Tax Avoidance and Multinational Profit Shifting\) Act 2013](#)

<sup>8</sup> [Second reading speech](#), Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013, the then Assistant Treasurer and Minister Assisting for Deregulation, David Bradbury, 13 February 2013

<sup>9</sup> Senate Economics Legislation Committee, Estimates, 22 October 2014, [Official Committee Hansard](#), page 149.

<sup>10</sup> Schedule 1, [Tax and Superannuation Laws Amendment \(2014 Measures No 4\) Act 2014](#)

Assistant Treasurer announced in November 2013 that the Government would proceed with the reforms in order to prevent erosion of the Australian tax base.<sup>12</sup>

These rules impose a limit on the amount of interest that can be claimed as a deduction in calculating the taxable income of both inbound and outbound investors and are specifically directed to preventing multinational enterprises from shifting profits outside Australia.

### *CFC regime*

The CFC rules, which are designed to prevent the deferral of Australian taxation on certain passive and related party income derived by CFCs, have also recently been the subject of a lengthy review and consultation process through the Board of Taxation and Treasury in 2008, 2009, 2010 and 2011.<sup>13</sup>

Further consideration of amendments to the CFC rules<sup>14</sup> has been put on hold by the current Government<sup>15</sup>. Accordingly, the existing comprehensive and robust CFC regime remains.

### *Summary*

ATO Deputy Commissioner Mark Konza recently referred to these four integrity measures as “strong ... rules that provide defences against [base erosion and profit shifting] risks.”<sup>16</sup>

Regarding the enforcement of these integrity rules, Treasury recently noted in the July 2013 Scoping Paper, ‘Risks to the Sustainability of Australia’s Corporate Tax Base’ (Treasury Scoping Paper)<sup>17</sup>:

*“Throughout the evolution of the jurisdiction to tax policy, Australia has had rules in place to protect the ability of Australia to exercise its jurisdiction to tax, with these rules being enforced robustly and consistently by tax authorities. In particular, Australia has a long history of actively enforcing ‘transfer pricing’ provisions to address the challenge of how to ensure that appropriate valuations apply to cross-border transactions and ‘thin capitalisation’ rules to address profit shifting through the excessive allocation of debt to Australia.”<sup>18</sup>*

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<sup>11</sup> 2013-14 Federal Budget, [Revenue Measures](#), “Protecting the corporate tax base from erosion and loopholes – addressing aggressive tax structures that seek to shift profits by artificially loading debt into Australia” and then Assistant Treasurer, Minister Assisting for Financial Services & Superannuation and Minister for Competition Policy & Consumer Affairs, David Bradbury, Media Release No 71, “[Protecting the corporate tax base from erosion and loopholes – measures and consultation arrangements](#)”, 14 May 2013

<sup>12</sup> Treasurer and the then Assistant Treasurer Joint Media Release, “[Restoring integrity in the Australian tax system](#)”, 6 November 2013

<sup>13</sup> Review of the Foreign Source Income Anti-Tax-Deferral Regimes, [Report to the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs](#), Board of Taxation, September 2008. This was followed by a Treasury consultation process conducted by Treasury through the release of a [Discussion Paper](#) on 12 May 2009, and two Consultation Papers in [January 2010](#) and [July 2010](#).

<sup>14</sup> The then Assistant Treasurer and Minister for Financial Services and Superannuation released [Exposure Draft legislation](#) for changes to the CFC rules on 17 February 2011.

<sup>15</sup> The then Assistant Treasurer, Arthur Sinodinos, Media release, [Integrity Restored to Australia’s Taxation System](#), 14 December 2013. The changes to the CFC rules had been deferred by the previous Government (refer the then Assistant Treasurer, David Bradbury, Media release No 71, [Protecting the corporate tax base from erosion and loopholes – measures and consultation arrangements](#), 14 May 2013) pending the review of the CFC rules internationally being conducted by the OECD. That review is now being conducted under the OECD BEPS Action Plan, Action 3 - Strengthen CFC rules - Develop recommendations regarding the design of controlled foreign company rules. A discussion paper is scheduled for release by the OECD in April 2015.

<sup>16</sup> ATO Deputy Commissioner Mark Konza, [Global tax avoidance and its effects on Australia’s economic prosperity](#), Address presented to Committee for Economic Development of Australia, 26 August 2014.

<sup>17</sup> The Treasury Scoping Paper was produced as a result of a review requested in December 2012 by the then Assistant Treasurer, David Bradbury, “to examine the risks to the sustainability of Australia’s corporate tax base from the way current international tax rules are able to be used to minimise or escape taxation.”

<sup>18</sup> [Risks to the Sustainability of Australia’s Corporate Tax Base](#), Scoping Paper, Treasury, July 2013 (Treasury Scoping Paper), paragraph 37.

Deloitte agrees that, on an international measure, Australian tax law contains strong measures to address international tax avoidance and profit shifting. These laws are well enforced and significantly impact taxpayer behaviour.

## **ii) Broad-based company income tax system**

We also note that Australia's company income tax system is generally regarded as being broad-based.

In the Final Report of the Business Tax Working Group (BTWG), which was established following the Tax Forum held by the previous Government in October 2011 to make recommendations on how the business tax system could be improved, the BTWG found it difficult to find ways in which to broaden the business tax base:

*"Reductions in the company tax rate during the 1980s and 1990s were paid for by making the company tax system broader, such as introducing capital gains tax and fringe benefits tax, applying income tax to gold, and removing most accelerated depreciation.*

*As a result of these previous reforms, the Working Group has found it more difficult to identify ways to broaden the business tax base further."*<sup>19</sup>

This finding was restated recently by Mr Rob Heferen, Executive Director, Revenue Group, Treasury in testimony before the Senate Economics Legislation Committee Estimates in October 2014:

*"The Howard government's response to the Ralph review back in 2000, when the rate went from 36, 33 down to 30, the big trade-off there was broadening the base and reducing the rate. A lot of the accelerated depreciation is out of the system. There is still a bit for oil and gas pipes, tractors, planes and buildings, but I think people who work in this area, either tax experts or public policy people, are pretty content that that is probably a sensible spot to be. In essence, like the 30 per cent rate, there is still an element of arbitrariness about them, but they have landed in a spot and they have been there for quite a while."*<sup>20</sup>

## **iii) Active, effective tax authority**

Deloitte recognises the ATO as a strategic, well-respected, pro-active and effective revenue authority, which is at the forefront of the interpretation and enforcement of the tax law to maintain the integrity of the Australian tax system.

The ATO has extensive investigative powers which enable it to "take appropriate measures to ensure that multinational companies operating in Australia are not just complying with our laws but also paying their fair share."<sup>21</sup>

The ATO also actively co-operates and collaborates with tax administrations internationally on compliance activities regarding cross-border tax arrangements undertaken by individuals and entities.<sup>22</sup>

<sup>19</sup> Business Tax Working Group, Final Report, 2 November 2012, [Chapter 2](#), paragraphs 59-60.

<sup>20</sup> Senate Economics Legislation Committee, Estimates, 22 October 2014, [Official Committee Hansard](#), page 147.

<sup>21</sup> Treasurer's Ministerial Statement, 4 September 2014.

<sup>22</sup> The Commissioner of Taxation is a member of the OECD Forum on Tax Administration and the Study Group on Asian Tax Administration and Research. The [Ninth meeting of the OECD Forum on Tax Administration](#) was held on 23-24 October 2014. Australia hosted the 44th annual Study Group on Asian Tax Administration and Research (SGATAR) conference on 24 to 27 November 2014.

#### iv) *Strong tax compliance culture*

The active and effective administration of Australia's tax regime is supported by a strong culture among the Australian businesses community and within the Australian community generally of compliance with the tax law.

In a speech delivered earlier this year, ATO Deputy Commissioner Mark Konza said: "[Australia] also has comparatively sound levels of voluntary compliance and comparatively healthy levels of company income tax."<sup>23</sup>

The recent public debate, particularly following the release of the report, *Who pays for our common wealth? Tax Practices of the ASX 200*<sup>24</sup>, has created a perception that Australian companies are not meeting their obligations under the tax law.

In our view, this debate has incorrectly and unhelpfully confused the normal calculation of taxable income and tax payable according to the tax law (noting that taxable income will always differ from accounting profit) with arrangements aimed at avoiding tax.

The adjustments to accounting profit that determine Australian taxable income and the amount of tax payable under the Australian tax law are the result of considered and deliberate tax policy decisions, designed and enacted to achieve particular outcomes. The determination of taxable income and tax payable includes, for example, deductions for losses carried forward from prior years, capital allowances for capital expenditure on plant and equipment, exemptions for foreign dividends and tax offsets for research and development expenditure.

The tax law also stipulates the entities that are liable to tax. For example, in the case of ASX entities that are listed property trusts, it is generally the investors in the listed property trust who are taxed on their share of the net (taxable) income of the trust (at their marginal or corporate rate of tax) rather than the listed property trust itself. It is misleading to assert that there is evidence of tax avoidance in the case of a listed property trust / stapled group paying tax at less than 30%.

At a recent Senate Economics Legislation Committee Estimates hearing, Mr Neil Olesen, who appeared before the Committee as Acting Commissioner of Taxation, noted that the recent debate has created the impression that Australian public companies are not meeting their obligations under the tax law when in fact that is not true.<sup>25</sup> This was recently restated by ATO Second Commissioner Andrew Mills. In the context of encouraging "willing participation" in the tax system, Mr Mills said:

*"I must point out that misleading reports like the one put out by United Voice recently, do the tax system no favours whatsoever. ... Using questionable research to make misleading (and in some cases just blatantly wrong) claims that some large taxpayers don't pay any tax or pay very little tax undermines confidence in the system and achieves the exact opposite of what organisations like United Voice claim to be advocating."<sup>26</sup>*

We note also the comments of ATO Second Commissioner Andrew Mills at the Senate Economics Legislation Committee Estimates hearing in October 2014 acknowledging that the **dividend imputation** system actually encourages the payment of tax by Australian companies, particularly public companies,

<sup>23</sup> ATO Deputy Commissioner Mark Konza, [BEPS Action Plan Update](#), Tax Institute NSW 7<sup>th</sup> Annual Tax Forum, 22 May 2014.

<sup>24</sup> [Who pays for our common wealth? Tax Practices of the ASX 200](#), United Voice and the Tax Justice Network, September 2014.

<sup>25</sup> Senate Economics Legislation Committee, Estimates, 22 October 2014, [Official Committee Hansard](#), page 141.

<sup>26</sup> [It's time for tax \(administration\) reform](#), ATO Second Commissioner Mr Andrew Mills, Keynote address to the Australasian Tax Teachers Association 27<sup>th</sup> annual conference, 20 January 2015

because it enables them to pay franked dividends. Mr Mills noted, “We actually have some of the structural things in place that encourage Australian companies to pay Australian tax.”<sup>27</sup>

In introducing the Treasury Scoping Paper on ‘Risks to the Sustainability of Australia’s Corporate Tax Base’, the then Assistant Treasury, David Bradbury noted that the Scoping Paper had indicated it was difficult to assess the extent to which Australia’s corporate tax base was impacted by base erosion and profit shifting, and he also noted, regarding the corporate tax base:

*“The Scoping Paper notes that the preparedness of Governments to respond to integrity issues, the effectiveness of the Australian Taxation Office (ATO) and a strong compliance culture among Australian businesses have helped to sustain Australia’s corporate tax base.”<sup>28</sup>*

The Commissioner of Taxation, Chris Jordan, also recently noted the strength of the tax compliance culture in Australia. In a speech in April 2014, Mr Jordan said:

*“Our level of willing participation is good in Australia with more than 95% of the revenue we collect coming in voluntarily; the balance as a result of active compliance. Compare that with somewhere like Italy —nearly a quarter of the net tax revenue only comes in as a result of active compliance intervention.*

*I think our high level of willing participation in Australia is the result of many factors - belief in taxes, trust in the fairness and integrity of the administration, structure of systems such as PAYG, dividend franking, and of course the deterrent effect of compliance enforcement actions.”<sup>29</sup>*

## **v) International tax - Base erosion and profit shifting**

The OECD began work on its BEPS project to address concerns that the current international tax laws have not kept pace with how business is now conducted globally. The OECD identified the fundamental policy issue as:

*“the international common principles drawn from national experiences to share tax jurisdiction may not have kept pace with the changing business environment. Domestic rules for international taxation and internationally agreed standards are still grounded in an economic environment characterised by a lower degree of economic integration across borders, rather than today’s environment of global taxpayers, characterised by the increasing importance of intellectual property as a value-driver and by constant developments of information and communication technologies.”<sup>30</sup>*

In May 2013, Treasury released an Issues Paper for public consultation outlining the challenges that changes in the global economy pose to the international tax system.<sup>31</sup> This was followed in July 2013 by a Treasury Scoping Paper, ‘Risks to the sustainability of Australia’s corporate tax base’, which concluded that the extent to which BEPS is currently affecting Australia’s corporate tax base is unclear; however, there were real and identifiable risks facing Australia’s corporate tax base and the corporate tax base of other countries.<sup>32</sup>

The Treasury Scoping Paper found that global tax settings have failed to keep pace with changes in the global economy. The Scoping Paper identified the exploitation of gaps and inconsistencies in tax treaties,

<sup>27</sup> Senate Economics Legislation Committee, Estimates, 22 October 2014, [Official Committee Hansard](#), page 149.

<sup>28</sup> [Risks to the Sustainability of Australia’s Corporate Tax Base](#), Scoping Paper, Treasury, July 2013, Foreword.

<sup>29</sup> [Reinventing the ATO – building trust in Australia’s tax administration](#), Commissioner of Taxation Chris Jordan speech to the ATAX 11<sup>th</sup> International Tax Administration Conference, Sydney 14 April 2014.

<sup>30</sup> OECD, [The OECD Work on Base Erosion and Profit Shifting](#), 4 February 2013.

<sup>31</sup> This was in response to the review by Treasury requested by the then Assistant Treasurer, David Bradbury, in December 2012.

<sup>32</sup> [Risks to the Sustainability of Australia’s Corporate Tax Base](#), Scoping Paper, Treasury, July 2013, paragraphs 207-208.



the increased 'digitisation' of the economy and the challenges for the international community to effectively curb the harmful tax practices of some jurisdictions as highlighting shortcomings in the international tax framework.<sup>33</sup>

We agree that the current international tax laws have not kept pace with the nature of modern global trading and businesses models. We concur that the international tax laws need to change.

We also recognise the significance of the challenges, faced by both government and business, which are posed by BEPS. Accordingly, we would encourage an open, fair and balanced debate about the effectiveness and appropriateness of the various tax systems in the global economy, recognising the complexity of organisations, their transactions and the tax legislation.

We strongly support the OECD's leadership in the tax debate through the G20/OECD BEPS Action Plan<sup>34</sup>, a collaborative, co-ordinated and comprehensive reconsideration of the complex tax policy issues and the various elements of international tax regimes that contribute to BEPS. We regard the work being done through their Action Plan as an important opportunity to modernise the international tax rules and create a more coherent and sustainable global tax system. The Australian Government should continue to play an active role in the BEPS process.

As a general principle, we believe that any solution should:

- be developed and implemented multilaterally;
- promote certainty and simplicity; and
- respect the principle of avoiding double taxation, and
- prevent double non-taxation.

Currently, Deloitte member firms are responding to OECD requests for input and are participating in discussions of the Business and Industry Advisory Committee to the OECD. Deloitte is also participating in Australian Treasury BEPS initiatives, and educating clients through webinars and client conferences on the current issues being considered by the OECD and the progress of the OECD's Action Plan. We stand ready to help provide advice to decision makers as to the efficiency, administration and fairness of any tax proposals.

## *vi) The need for reform in Australia*

Whilst recognising the positives identified above – robust and broad domestic corporate tax laws, strong integrity provisions, effective tax authority, strong compliance culture and our ongoing participation in the BEPS process – we are not suggesting that the Australian tax system requires no review or improvement.

Our view is that the Australian corporate tax system in its current form is extremely comprehensive and robust, is administered by a respected tax authority and generates a high degree of voluntary compliance. In seeking to reform and improve Australian tax system, it is important to appreciate and build on the strengths of the current corporate tax system.

As stated, Deloitte supports the OECD BEPS related work as an important opportunity to modernise international tax rules and create a more coherent and sustainable global tax system. This will likely, in due course, see changes made to Australian domestic tax laws, changes to Australia's double tax treaties, and changes to internationally accepted tax norms.

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<sup>33</sup> Ibid, paragraph 208.

<sup>34</sup> [Action Plan on Base Erosion and Profit Shifting](#), OECD, July 2013.

## b) Need for greater transparency

In principle, we support greater transparency about taxation. We note that certain tax transparency measures have already been enacted in Australia<sup>35</sup> and the Australian Government has also recently endorsed further measures which seek to increase tax transparency.

The Commissioner of Taxation is required to make publicly available specific information relating to the tax affairs of all corporate tax entities that have a reported total income of \$100 million or more (i.e. name, Australian Business Number, total income, taxable income and tax payable) from the 2013-14 income year.<sup>36</sup> The ATO has planned a formal public consultation process regarding the implementation issues for the tax transparency measure.<sup>37</sup> The first publication of this information by the Commissioner of Taxation is expected to be in late 2015.

Internationally, the ATO regularly exchanges information with other jurisdictions. It is able to do so through the existence of Tax Information Exchange Agreements<sup>38</sup> and the exchange of information articles in Australia's tax treaties. In his Ministerial Statement of 4 September 2014, the Treasurer said:

*"Australia is a leader in exchanging information with other countries. This involves transmission of individuals' information on financial accounts and income to other tax authorities where they are resident. Currently the ATO automatically sends information to around 40 countries, and receives it from around 20 tax authorities."*

The OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters (CRS) was endorsed by the G20 Finance Ministers and Central Bank Governors at a meeting in Sydney in February 2014.<sup>39</sup> Adoption of the CRS in Australia will require financial institutions to report to the ATO financial account information held on foreign account holders which the ATO will then share with the tax authorities of overseas jurisdictions. Similarly, the ATO will receive such information from foreign tax authorities reported to them in connection with accounts held by Australian residents.

A discussion paper on the CRS was released by Treasury on 19 June 2014. In September 2014, the G20 released an implementation plan<sup>40</sup> and the Australian Government has indicated that Australia will implement the CRS for the automatic exchange of financial account information from 1 January 2017, with the first exchange of information in 2018.<sup>41</sup>

The ATO has expressed support for the improvement of tax transparency through reforms to transfer pricing documentation including country-by-country (CbC) reporting by multinational enterprises (MNE) of their activities, assets, income and tax, recently released by the OECD.<sup>42</sup> ATO Deputy Commissioner Mark

<sup>35</sup> Schedule 5, *Tax Laws Amendment (2013 Measures No 2) Act 2013*, introduced by the previous Government and enacted in June 2013. In his [Second reading speech](#) upon the introduction of the Bill into the House of Representatives, the then Assistant Treasurer and Minister Assisting for Deregulation, David Bradbury, said: "By increasing the transparency of our business tax system, the government will ensure that the public is well informed about the contributions made by large corporations. This is also intended to discourage aggressive tax minimisation practices by large and multinational businesses."

<sup>36</sup> Section 3C of the *Taxation Administration Act 1953*.

<sup>37</sup> [ATO Consultation Hub](#), Administration Issues, Issue Number 201376.

<sup>38</sup> Australia has entered into 36 TIEAs (three have not yet entered into force).

<sup>39</sup> [Conclusion of G20 Finance Ministers and Central Bank Governors Meeting](#), Media release 23 February 2014.

<sup>40</sup> The [G20 Common Reporting Standard Implementation Plan](#), September 2014.

<sup>41</sup> [Automatic Exchange of Information: Status of commitments](#), OECD, 6 November 2014 and Mid-Year Economic and Fiscal Outlook, Appendix A Policy Decisions taken since the 2014-15 Budget, [Revenue Measures](#), 15 December 2014.

<sup>42</sup> [Guidance on Transfer Pricing Documentation and Country-by-Country Reporting](#), OECD, 16 September 2014.

Konza has said these reports should give tax administrations a better basis on which to analyse the global operations of an MNE in their country.<sup>43</sup>

Importantly in our view, Mr Konza has also recognised that there needs to be a balance between information that is useful to tax administrations and the impact that the reporting may have on taxpayers. Mr Konza said:

*"We are supportive of CbC reporting as an important transparency measure. We are also conscious of the balance required between information that is useful to tax administrations, maintaining confidentiality, and ensuring requirements do not cause excessive compliance costs for taxpayers.*

*We are currently reviewing the impact of CbC reports on our administrative and compliance products, to see how they would operate together and to minimise these risks."*<sup>44</sup>

### **c) Opportunities to collaborate internationally and/or act unilaterally**

We believe that Australia must continue to work with international organisations (e.g. G20/OECD) to bring about multilateral reform to address concerns associated with BEPS.

If Australia were to unilaterally implement measures addressing BEPS, there is a risk that this could affect economic activity. In addition, approaching BEPS issues on a unilateral basis runs the risk that international businesses may be left in the inappropriate position of facing double taxation.

We note that multilateral reform has been supported by the Government<sup>45</sup>, Treasury<sup>46</sup> and the ATO<sup>47</sup> and that a multilateral approach is the approach being adopted and facilitated by the OECD in its work on the G20/OECD Action Plan.

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<sup>43</sup> [Global tax avoidance and its effects on Australia's economic prosperity](#), ATO Deputy Commissioner Mark Konza, Address presented to Committee for Economic Development of Australia, 26 August 2014.

<sup>44</sup> [Base erosion and profit shifting – a progress report on G20/OECD action](#), ATO Deputy Commissioner Mark Konza, 24 September 2014.

<sup>45</sup> [Addressing BEPS and the Government's policy agenda](#), The Hon Seven Ciobo MP, Parliamentary Secretary to the Treasurer, Address to the Clayton Utz BEPS Workshop, 16 May 2014: "Restoring trust in the international system on a multilateral basis cannot be achieved by OECD countries acting alone and the G20/OECD BEPS Project has been inclusive, incorporating non-OECD G20 countries into the work of the OECD on an equal footing."

<sup>46</sup> [Risks to the Sustainability of Australia's Corporate Tax Base](#), Scoping Paper, Treasury, July 2013, paragraph 210: "But the key focus of Australia's efforts should be working multilaterally through international organisations to modernise international tax rules."

<sup>47</sup> Refer [Reinventing the ATO](#), Commissioner of Taxation Chris Jordan address to the Tax Institute of Australia 29<sup>th</sup> National Convention, Hobart 27 March 2014: "This practical, multilateral cooperation is the key to addressing profit shifting and reforming the international tax architecture." See also [BEPS Action Plan Update](#), ATO Deputy Commissioner Mark Konza, Tax Institute NSW 7<sup>th</sup> Annual Tax Forum, 22 May 2014: "It is clear that a unilateral response to BEPS will not be enough, and with our current presidency of the G20, Australia through Treasury and the ATO has a unique opportunity to promote greater international cooperation and collaborative approaches on global tax matters."