

## Chapter 6

### Facilitating government agencies to collect corporate tax and protect public revenue

6.1 Within the Australian Government, a number of agencies are involved in the collection of tax revenue, monitoring of company behaviour, and development of corporate tax policy. This chapter explores the performance and capability in relation to the corporate tax system of the Australian Taxation Office (ATO) and the Australian Securities and Investments Commission (ASIC).

#### Australian Taxation Office

6.2 The ATO is the government agency responsible for collecting Commonwealth tax revenue and monitoring the compliance of companies with their tax obligations. It considers itself to be an active and visible regulator with a well-educated and experienced workforce administering internationally respected law. It works cooperatively with other revenue authorities and makes risk-based decisions about how resources are managed to administer the tax system.<sup>1</sup> As the ATO's overall approach to administering the corporate tax system is based on cooperative compliance to support willing participation, it assists corporations to meet their tax obligations.<sup>2</sup>

6.3 The ATO is attempting to mitigate international and profit shifting risks through a range of activities, including:

- differentiated compliance approaches, such as risk reviews and audits for larger taxpayers and leveraged approaches (for example, project management) for smaller taxpayers;
- marketing and communications activities to provide guidance on the operation of the law to promote voluntary compliance;
- identifying and analysing new, emerging and evolving trends using intelligence from cases, other external sources and other jurisdictions; and,
- providing empirical evidence to government and Treasury when current laws are found to be ineffective or are producing an unintended policy outcome.<sup>3</sup>

6.4 These efforts are being supplemented by programs that focus on specific areas of risk. For example, the ATO's International Structuring and Profit Shifting (ISAPS) compliance program is investigating corporations that have undertaken international restructures or have significant cross-border arrangements.

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1 *Submission 48*, p. 3.

2 *Submission 48*, p. 14.

3 *Submission 48*, pp. 24–25.

### *The risk differentiation framework*

6.5 In order to fulfil its objectives efficiently and effectively, the ATO uses a risk differentiation framework (RDF) to assess the likelihood of each company not meeting its tax obligations and the consequence of potential non-compliance. This approach is consistent with international best practice and ensures that resources and efforts are focused on those taxpayers and issues posing the greatest risk to the tax system.<sup>4</sup>

6.6 The ATO provided the committee with a table of the number of companies assigned to each risk rating over the last 4 years (Table 6.1).<sup>5</sup>

**Table 6.1: RDF risk ratings for public and foreign owned corporations**

<b>RDF Rating</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Higher Risk	13	6	3	1
Key Taxpayer	78	80	58	68
Medium Risk	380	220	242	307
Lower Risk	642	687	602	33 252 <sup>6</sup>
<b>Total</b>	<b>1113</b>	<b>993</b>	<b>905</b>	<b>33 628</b>

6.7 The number of corporations in the higher risk category has been declining as the ATO increasingly focuses on a 'prevention before correction' approach which seeks to increase early engagement and identify and address risk pre-lodgement. According to Mr Jeremy Hirschhorn, Deputy Commissioner of Public Groups:

We view the movement of 12 of those taxpayers from Q1 [higher risk] to Q2 [key taxpayer] as a positive, because it was actually a behavioural change from those companies. They started coming to us before the event and talking to us about what they were doing rather than us working out what they had done after the event and trying to investigate.<sup>7</sup>

6.8 In relation to the sole remaining taxpayer considered to be higher risk in 2014, Mr Chris Jordan, Commissioner of Taxation, noted that:

Historically, this particular taxpayer has made it quite clear that they have not had an interest in being open with us and discussing any of their tax affairs with us prior to doing transactions. I understand that that attitude

4 *Submission 48*, p. 17.

5 *Submission 48*, p. 17.

6 The number of lower risk corporations increased markedly in 2014 due to organisational realignments.

7 *Committee Hansard*, 22 April 2015, p. 15.

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may be changing and there have been approaches to us recently to work with us to get out of that Q1 [higher risk].<sup>8</sup>

6.9 In general, the ATO continually engages with higher risk and key taxpayers to review their tax affairs and seeks to provide certainty on issues and risks as they arise and resolve issues where uncertainty exists.<sup>9</sup>

6.10 For lower and medium risk corporate taxpayers, the ATO's strategy is to influence taxpayers pre-lodgement and to target certain segments of the lower consequence population through guidance, alerts and workshops; monitor taxpayers through macro and micro level analysis; and undertake post-lodgement review and audit activities as required.<sup>10</sup>

6.11 A similar RDF is applied to private companies to provide an initial risk assessment on them to inform the ATO's assurance strategies. Similar to public companies, higher consequence taxpayers and higher risk taxpayers in this group are likely to be subject to increased scrutiny and assurance activities.

### ***Capability and resourcing***

6.12 Within the ATO, there are two main business lines that manage income tax issues for corporates. The Public Groups and International (PG&I) business line has responsibility for all publicly listed and international entities. The Private Groups and High Wealth Individuals (PGH) business line has responsibility for private groups with a turnover of greater than \$2 million.<sup>11</sup>

6.13 Around 2,700 ATO officers are engaged in work with corporates across these two business lines with PG&I employing around 45 per cent and PGH employing around 55 per cent.<sup>12</sup> It is anticipated that the relative allocation of staffing will change as the operation of specific projects, such as ISAPS compliance program and Project Wickenby,<sup>13</sup> run their course.

6.14 Many of the staff working in the two main corporate business lines have extensive tax experience across a range of public and private sector environments. In response to concerns about staffing in the international area, Mr Jordan contended:

We have more staff in our international area than ever before who have, on average, more than 12 years' experience, are better qualified and are more engaged. Our international teams are well rounded, with experts who understand the complexity of international dealings and can deal with various aspects of international tax...

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8 *Committee Hansard*, 22 April 2015, p. 15.

9 *Submission 48*, p. 18.

10 *Submission 48*, pp. 18–19.

11 ATO, *Submission 48*, p. 29.

12 ATO, *Submission 48*, p. 30.

13 Project Wickenby is a cross-agency initiative established in 2006 to protect the integrity of Australia's financial and regulatory systems by preventing people from promoting or participating in the abusive use of secrecy jurisdictions.

I am very proud of the ability, expertise and integrity of the people we have working on our large corporate cases and I am extremely confident of our capability moving forward.<sup>14</sup>

6.15 In light of recent budget reductions and associated staffing redundancies, the committee was concerned about a potential reduction in the capability and performance of the ATO to identify and litigate corporate tax avoidance. For example, the Community and Public Sector Union (CPSU) submitted that:

The audit team has been hit particularly hard by job losses. The ATO Assistant Commissioner Geoff Leeper told a recent Senate estimates hearing that nearly a quarter of the redundancies so far had come from the audit area.

CPSU members report that this has significantly impacted the ability of the ATO to investigate matters. Quite simply, they report that fewer audits are being conducted (impacting negatively on revenue), and there is reluctance to review and/or audit larger and more complex entities.<sup>15</sup>

6.16 In its submission, the ATO responded by saying:

While our recent redundancy program reduced staff numbers we have retained high levels of experience and expertise and continue working to develop critical expertise in our staff...It is important to note that redundancies were offered only after assessment of the criticality of positions and in nearly all cases the staff member, their supervisor, and a panel of Senior Executives agreed that the officer had capabilities that were classified as 'non-essential' for business delivery.<sup>16</sup>

6.17 Noting that budget cuts had led to staff reductions, Mr Jordan indicated that the ATO is appropriately targeting risks and allocating resources accordingly:

What we have done is make sure that we are allocating staff to the areas of the highest interest...So we have got more senior people, we have got more private sector expertise brought in, and we have moved significant senior resources within the ATO into that internationals area, because that is really an area of focus.<sup>17</sup>

6.18 Specifically in relation to the effect of redundancies on the international group, Mr Jordan contended that:

...any talk that our redundancy program has had an adverse impact on our capability, in our area dealing with public groups, large corporations and internationals, is simply not true.<sup>18</sup>

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14 *Committee Hansard*, 22 April 2015, p. 2.

15 *Submission 14*, p. 8.

16 *Submission 48*, p. 30.

17 *Committee Hansard*, 8 April 2015, p. 30.

18 *Committee Hansard*, 22 April 2015, p. 2.

6.19 Mr Mark Konza, Deputy Commissioner, International, ATO, noted that the significant focus on improving and streamlining internal processes had not compromised the ability of the ATO to carry out its role as an assurer of the corporate tax base:

We have flattened structures, we have consolidated our teams so that we are more efficient, we have changed our processes. All in all, we have improved the management of our processes so we can stay as effective as we were.<sup>19</sup>

6.20 While staffing has been reduced, including in the international and public groups area, the ATO considered the impact of this had been off-set by the introduction of the 'smarter data' project.

...we are doing a lot of work in our analytics area because we think that has got a huge leverage potential. They are highly specialised people: they are typically not with a tax background, but a lot of engineering, computer science, software development backgrounds.<sup>20</sup>

6.21 In addition, the ATO has:

- recruited an additional 80 audit, accounting and tax law specialists;
- ensured succession plans are in place for senior roles; and
- focused on building international tax skills to ensure that its capability is not compromised.<sup>21</sup>

6.22 KPMG highlighted that staff numbers are only a part of the capability and resourcing debate:

The ATO's staffing numbers are only part of the equation. What is equally important is how the ATO uses its resources. Can early engagement with taxpayers make litigation unnecessary? Could better use of data mining and analytics deliver better outcomes at a lower cost? Are the right cases being selected for investigation and/or litigation? Should a matter proceed to court, or would another dispute resolution process be more efficient?<sup>22</sup>

6.23 The committee notes the decline in ATO staffing and resourcing levels in recent Budgets, and the pressure this has put on consolidated revenues, audits and dispute settlements to identify, investigate and prosecute, where necessary, instances of corporate tax avoidance in Australia.

6.24 The committee acknowledges that the ATO has undergone significant structural reorganisation to make the best use of available resources and is currently devoting its efforts into areas likely to prove most beneficial. Nonetheless, the committee considers that it is in the interest of the government and the wider

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19 *Committee Hansard*, 8 April 2015, p. 33.

20 *Committee Hansard*, 8 April 2015, p. 34.

21 ATO, *Submission 48*, pp. 30–31.

22 *Submission 91*, p. 8.

community to ensure that the ATO has sufficient funds to fully and effectively combat tax avoidance.

### **Recommendation 10**

**6.25 The committee recommends an independent audit of ATO resourcing, funding and staffing.**

### **Recommendation 11**

**6.26 The committee recommends the ATO report to parliament, at least annually on:**

- **the number of audits or disputes launched concerning multinational corporations;**
- **the number of cases settled with multinational corporations;**
- **the number of successful legal proceedings concluded against multinational corporations; and**
- **the staff resources allocated to tax compliance of multinational corporations.**

### ***Willingness to undertake litigation***

6.27 Some stakeholders accused the ATO of seeking to avoid litigation and settle with large corporates. For example, reflecting the experiences of members working in the ATO, the CPSU submitted that:

Members advised that funding available to litigate matters has been cut, with case officers forced to settle matters that would otherwise see important issues tested in court. Members suggested that, due to the costs involved, there was reluctance within the ATO to prosecute large companies suspected of engaging in tax avoidance because of the duration and complexity of these matters. Members were concerned that settlements potentially cost the ATO significant revenue.<sup>23</sup>

6.28 Mr Jordan spoke of the resources tied up in pursuing just one of the complex tax avoidance allegations that was prosecuted:

If I could just take one thing that is on the public record it would be the Chevron case, which is very recent, from the end of last year. Not to oversimplify it, basically, there was a borrowing at two per cent by the United States parent and an on-lending at nine per cent. As I understand it, there were something like over 30 expert reports. There were 11 barristers in the case. It took years to get up, and, in my view—maybe I am just too simple here—that looked like a pretty straightforward issue.<sup>24</sup>

6.29 Even so, in response to concerns raised in submissions, he noted in his opening statement to the committee on 8 April 2015 that:

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23 *Submission 14*, p. 9.

24 *Committee Hansard*, 8 April 2015, p. 26.

Whilst we do look to engage earlier and solve issues more quickly, we will continue to use litigation where there is a need for law clarification or if a message needs to be sent that certain behaviours are simply not acceptable. We will not hesitate to pass on information to the Commonwealth Director of Public Prosecutions and law enforcement agencies, where appropriate.<sup>25</sup>

6.30 According to the ATO, it seeks to identify and resolve potential issues early by offering a range of opportunities for significant (or potentially contentious) corporate tax planning and major transactions to be disclosed. By taking a more collaborative approach and shifting efforts towards early engagement, the ATO has seen a reduction in the number of audit and review cases.<sup>26</sup>

6.31 Other stakeholders, such as PricewaterhouseCoopers, KPMG and the Tax Institute, supported the position of the ATO. For example, KPMG submitted that it:

...agrees with the many other submissions to the inquiry, which observe that the ATO has long been, and continues to be, a highly regarded tax administrator when it comes to investigating and commencing litigation.<sup>27</sup>

6.32 The committee understands that significant effort is required to develop and prosecute cases involving corporate tax avoidance and acknowledges that, even then, the result may still be uncertain. While the committee realises the ATO is doing what it can with the resources it has available, corporate tax avoidance and aggressive minimisation is potentially the most important risk to Australia's tax base.

6.33 Maintaining the integrity of the tax base is essential and it needs to be done well. Accordingly, the committee considers that sufficient resources need to be provided to enable the ATO to undertake the litigation it deems appropriate.

#### ***Ensuring access to relevant information***

6.34 While the committee considers that public transparency is vital to maintain confidence in the tax system, it is equally important that tax administrators are able to access the relevant information they require, particularly in relation to the activities of multinational corporations.

6.35 Professor Vann provided the most succinct reason for strengthening transparency—'You cannot tax what you cannot see....'<sup>28</sup>

6.36 Accessing relevant information is an essential component of identifying and investigating aggressive tax planning, avoidance and evasion. The ATO explained that it has difficulties obtaining the information that it needs to undertake its duties in identifying and addressing aggressive minimisation practices:

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25 *Committee Hansard*, 8 April 2015, p. 19.

26 *Submission 48*, p. 34.

27 *Submission 91*, p. 7.

28 *Committee Hansard*, 8 April 2015, p. 17.

Particularly when you are dealing with international companies, getting information, which often has to be got from their parent or from other jurisdictions using treaty powers, is a frustratingly slow process.<sup>29</sup>

6.37 Strict privacy laws in relation to the use of this information and the need for the ATO to maintain an ongoing relationship with its clients should allay any concerns about the likelihood of confidential information being released into the public domain without authorisation.

6.38 Indeed, the ATO has refused the committee's request to disclose confidential taxpayer information. In this regard, Mr Jordan highlighted that:

...all taxpayers need to have confidence that confidentiality will be maintained over their taxation and commercial information. Disclosing confidential taxpayer information raises issues for the future for all taxpayers in terms of our ability to facilitate transparency, cooperation and productive relationships with them.<sup>30</sup>

6.39 In addition, the limitations placed on the ability of relevant government agencies to share or exchange information also hinder the ability of the tax office to identify and act on tax avoidance. The success of Project Wickenby—a cross-agency collaboration of 8 agencies to fight against tax avoidance, evasion and crime—illustrates the potential of having similar information sharing agreements on a more permanent basis.

6.40 The committee considers that the ATO should have the capacity to request and receive any useful information that can enable it to identify and investigate corporate tax avoidance and evasion. Where necessary, the ATO should be able to access any further information that it requires from the companies themselves, relevant government and non-government entities (such as ASIC, AUSTRAC, law enforcement agencies, accountants, lawyers and financial institutions) and relevant international jurisdictions.

### ***Country-by-Country reporting***

6.41 OECD initiatives, such as the introduction of common Country-by-Country reporting standards and automatic exchange of information, are important and necessary for tax administrators to enable them identify and act on aggressive tax planning.

6.42 Country-by-Country reporting, Action 13 of the BEPS agenda, is intended to provide tax administrators with sufficient information to assess high-level transfer pricing and other BEPS-related risks.<sup>31</sup>

6.43 Multinational enterprises with consolidated group revenue of greater than €750 million (or equivalent in domestic currency) in the previous fiscal year will be

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29 Mr Mark Konza, *Committee Hansard*, 22 April 2015, p. 8.

30 *Committee Hansard*, 8 April 2015, p. 21.

31 OECD, *Action 13: Country-by-Country Reporting Implementation Package*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 5.



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required to provide Country-by-Country reports of their activities, including data on revenue, profit and tax paid in each jurisdiction. The OECD considers that this balances the regulatory burden of reporting with the potential benefit to tax administrators as the approximately 15 per cent of multinationals that will be required to report control approximately 90 per cent of corporate revenues.<sup>32</sup>

6.44 Australia will be one of the first adopters of Country-by-Country reporting when it comes into effect on 1 January 2016.

6.45 The committee fully supports the initiatives of the OECD to facilitate the exchange of information between jurisdictions and the early adoption of Country-by-Country reporting. However, the extent to which these measures are effective largely depends on their implementation which is yet to come into effect.

### *Using international forums to promote dialogue*

6.46 In addition to the OECD and its work on base erosion and profit shifting, the ATO is leading a number of international forums to promote greater international collaboration to address multinational tax avoidance. Mr Jordan informed the committee that he had:

...taken on a role as vice-chair of the OECD Forum of Tax Administration with responsibility for revitalising the JITSIC network, which is the Joint International Tax Shelter Information and Collaboration project. The JITSIC network focuses specifically on tackling cross-border tax avoidance and evasion.<sup>33</sup>

6.47 He explained further:

... At Australia's instigation, we now have 38 member countries authorities worldwide. We are also cooperating within our own region. Late last year, I established a permanent taskforce with the tax commissioners of 17 jurisdictions from the Asia-Pacific region to actively share compliance tactics and intelligence, and these are very practical steps we can take now while we wait for the OECD to deliver their reform.<sup>34</sup>

6.48 Global collaborations and initiatives to share the detailed information required to identify aggressive tax planning practices operating across jurisdictions should be an imperative for countries, such as Australia, seeking to address harmful tax practices and more appropriately tax revenue at the source of its activity.

6.49 The committee supports the ATO's efforts to work with tax administrators in other jurisdictions to improve collaboration and information sharing between jurisdictions.

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32 OECD, *Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 4.

33 *Committee Hansard*, 8 April 2015, p. 20.

34 *Committee Hansard*, 8 April 2015, p. 20.

## **Australian Securities and Investments Commission (ASIC)**

6.50 The Australian Securities and Investment Commission (ASIC) is Australia's corporate, markets and financial services regulator. ASIC's fundamental objective is to allow markets to allocate capital efficiently to fund the real economy and, in turn, economic growth.<sup>35</sup>

6.51 ASIC seeks to share information with the ATO to help identify tax avoidance and aggressive minimisation, where permitted by law. Public financial reports filed with ASIC can also provide public information to indicate that a corporation is involved in tax avoidance or has adopted aggressive minimisation strategies.<sup>36</sup>

6.52 ASIC assists the ATO in its role of collecting tax through:

- sharing information that each agency is permitted to share under their respective legislative arrangements;
- cooperating to address issues that are relevant to both agencies through collaborative means, such as working parties; and
- having relationship managers responsible for maintaining the relationship between agencies and dealing with ad hoc issues and requests for information.<sup>37</sup>

6.53 While information is not generally provided proactively, the exchange of information occurs relatively frequently between the two agencies and can facilitate meeting the regulatory mandates of each agency.<sup>38</sup> However, there are limitations on ASIC providing information to the ATO. This is particularly so if the ATO has not sought the information under a Memorandum of Understanding or if the information has been compulsorily acquired by ASIC for another purpose (in which case ASIC may be required to afford procedural fairness and hence defeat the purpose of the release of information).<sup>39</sup>

### ***Legislative amendments proposed by ASIC***

6.54 In its submission to the inquiry, ASIC provided the committee with a number of possible legislative amendments to provide more public transparency of information and facilitate greater information sharing between ASIC and the ATO to assist in identifying possible tax avoidance and aggressive minimisation.

6.55 The committee notes that ASIC has not proposed any changes to a director's duty to act in the best interests of shareholders.<sup>40</sup> ASIC considers that it would be

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35 *Submission 32*, p. 3.

36 *Submission 32*, pp. 3–4.

37 *Submission 32*, p. 6.

38 *Submission 32*, pp. 6–7.

39 *Submission 32*, p. 7.

40 Section 181 of the Corporations Act.

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impractical and inappropriate to attempt to address tax minimisation by modifying this general duty which is important to protect shareholder interests.<sup>41</sup>

*Disclosure of related party information in financial reports*

6.56 Currently, the accounting standards contain disclosure requirements for related party relationships and transactions. These disclosures could help the public identify non-arm's length arrangements that might be used to minimise tax payments in Australia. However, the requirements do not apply to non-reporting entities.

6.57 ASIC proposes that taxation legislation could be amended so that non-reporting entities would be required to make these disclosures in financial reports under the Corporations Act if the ATO requires them to do so.

*Grandfathered large proprietary companies*

6.58 Currently, a 'grandfathered' large proprietary company is required to prepare a financial report but is exempt from lodging it with ASIC if it meets certain conditions.<sup>42</sup> This reporting exemption means that certain companies are not subject to the same level of public scrutiny as other similarly sized companies by virtue of having an exemption because of when reporting requirements were introduced. The lack of availability of public financial reports reduces transparency about possible indicators of tax avoidance or tax minimisation.

6.59 ASIC proposes that the concept of 'grandfathered large proprietary companies' could be removed from the Corporations Act and these companies required to lodge financial reports with ASIC. This would remove any inequity with similar companies that are required to lodge financial reports. Consideration may need to be given to privacy concerns that may have contributed to the original decision to provide the grandfathering exemption.

*Confirmation whether a propriety company is small*

6.60 Currently, most of the more than 1.7 million Australian proprietary companies are not required by the Corporations Act to lodge financial reports with ASIC. Some of these companies may become large but fail to prepare and lodge financial reports. There is no requirement for these companies to confirm with ASIC annually that they are small, which, if required, would act as a trigger for the companies and their directors to review the company's status.

6.61 ASIC proposes that proprietary companies could be required by the Corporations Act to confirm with ASIC whether they remain small. However, this would need to be balanced against the administrative cost and red tape imposed on the

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41 *Submission 32*, p. 21.

42 For more information about the conditions relating to grandfathered large propriety companies, see *Exemption from having to lodge a financial report for 'grandfathered' large proprietary company*, <http://asic.gov.au/regulatory-resources/financial-reporting-and-audit/preparers-of-financial-reports/large-proprietary-companies-that-are-not-disclosing-entities/exemption-from-having-to-lodge-a-financial-report-for-grandfathered-large-proprietary-company/> (accessed 9 August 2015).

vast majority of proprietary companies that are small for any given year. There is also likely to be a cost to ASIC in following up companies that do not confirm their status for any given year.

*Limitations on information sharing with the ATO*

6.62 Currently, there are circumstances that sometimes require ASIC to provide procedural fairness to a person affected by the provision of information to the ATO that may help identify and address tax avoidance before the information is provided. This requirement has the potential to alert the person and defeats the purpose of the release of the information.

6.63 ASIC proposes that the confidentiality provisions in section 127 of the ASIC Act could be amended to put beyond doubt that ASIC is able to freely share information with the ATO without the need to provide procedural fairness to the affected person.

*False identities of directors*

6.64 Currently, ASIC has no authority to check the identity of individuals who are notified as being the directors of a company to be registered with ASIC. Such individuals could use false identities to form companies that are used in tax avoidance activities.

6.65 ASIC proposes that it could be allowed to require evidence of the identities of proposed directors of companies. The recommendation of the Financial System Inquiry to develop a national strategy for a federated-style model of trusted digital identities will assist with this.<sup>43</sup>

6.66 The committee notes that Treasury is undertaking a consultation process in relation to all of the recommendations proposed by the Financial System Inquiry which will inform the government's response.

*Reporting relief for foreign groups operating through proprietary companies*

6.67 According to ASIC, some proprietary companies controlled by foreign groups may be relying on Class Order 98/98 to not report in Australian, and may also be parts of groups that minimise tax on their business dealings with Australians. However, the underlying basis for the relief afforded by Class Order 98/98 is that the cost of preparing financial information significantly outweighs the benefit to the users of the financial report and imposes unreasonable burdens on the companies concerned.

6.68 As the ATO is a potential user of financial reports, it is well placed to assess where, for individual companies, the costs of preparing such reports do not significantly outweigh the benefits of public disclosure of matters such as effective tax rates or related party arrangements.

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43 Recommendation 15, Financial System Inquiry, *Financial System Inquiry Final Report*, November 2014.

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6.69 ASIC proposes that it could amend Class Order 98/98 so that relief is not available where the ATO notify that company (and ASIC) that the relief does not apply to that company.

*Committee view*

6.70 The committee welcomes the efforts of ASIC to put forward considered proposals that will assist in identifying corporate tax avoidance and aggressive minimisation. It considers that these legislative amendments should be considered with other measures to promote greater transparency of a corporation's activities and tax obligations, and enable better information sharing between agencies that hold information which could be used to identify and address corporate tax avoidance.

**Recommendation 12**

**6.71 The committee recommends that taxation legislation be amended so that non-reporting entities are required to disclose related party information in financial reports under the Corporations Act if notified to do so by the ATO.**

**Recommendation 13**

**6.72 The committee recommends that the concept of 'grandfathered large proprietary companies' be removed from the Corporations Act, and these companies be required to lodge financial reports with the Australian Securities and Investments Commission (ASIC).**

**Recommendation 14**

**6.73 The committee recommends that all proprietary companies are required to review and confirm their size with ASIC annually.**

**Recommendation 15**

**6.74 The committee recommends that the confidentiality provisions in section 127 of the ASIC Act be amended to allow ASIC to share information with the ATO without having to notify the affected person.**

**Recommendation 16**

**6.75 The committee recommends that people who propose to become directors of companies be required to provide evidence of their identity to the ASIC.**

**Recommendation 17**

**6.76 The committee recommends that ASIC amend Class Order 98/98 so that a company is not eligible for financial reporting relief, where the ATO notifies the company and ASIC that the relief does not apply to that company.**

**Senator Sam Dastyari  
Chair**

