



Ref: Senate Order 1108

Senator Jane Hume
Committee Chair
Senate Economics Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Senator Hume

I write with regard to the Order for the Production of Documents No 1108, agreed by the Senate on Tuesday 16 October 2018. The motion requires the Commissioner of Taxation ('the Commissioner') to:

'provide to the Economics Legislation Committee, in relation to designated financial entities for the financial years from the year ended 30 June 2001 (or substituted accounting period) to the year ended 30 June 2016 (or substituted accounting period) inclusive:

- i. the combined designated information for an entire category of designated APRA regulated entities, by no later than 18 October 2018 (first element), and*
- ii. the designated information provided for individual taxpayers, by no later than 29 November 2018 (second element).'*

I note the agreed revised due date for the second element is 21 December 2018.

First element of the Order – aggregated information (updated)

On 18 October 2018, I complied with the first element of the Order, providing the Committee with the aggregated information (as at 15 August 2018) of the designated APRA regulated financial entities that have lodged late or have outstanding returns from 2001 to 2016 financial years (inclusive). This information was based on system extracts.

Following the provision of this information to the Committee, we conducted a verification process, by reasonably attempting to contact all entities in scope, to check their information given the historical nature of the data. In completing this process, we identified several significant designated financial entities were not actually in scope of the Order and therefore, have removed them from the dataset. Accordingly, I have included the updated aggregated information in Attachment A.

The following points summarise our updated response to the first element of the Order.

- The information is aggregated based on APRA registered categories.
- Between the 2001 and 2016 financial years (inclusive), 5,685 income tax returns were lodged by the 402 entities in this population.
- The information shows there are no systemic late or non-lodgment issues.
- The majority of the late lodgments relate to years prior to 2005.
- Between 2001 and 2013, 118 income tax returns were lodged late (2.5% of the total 4,646 lodged).
- Between 2014 and 2016, 1,039 income tax returns were lodged and only one return was lodged late.
- There are now only two entities with outstanding lodgments during the 2001 to 2016 period, with a total of four outstanding lodgements during the period. However, all of these relate to years in which they were deregistered by APRA and either in liquidation or deregistered as a company during the year.

Second element of the Order – taxpayer specific information

I provide our in-confidence response to the second element of the Order in Attachment B. This provides the taxpayer specific information for the designated APRA regulated financial entities that have lodged late, or have outstanding returns from 2001 to 2016 financial years (inclusive).

As per the letter from Minister Cormann dated 6 December 2018, I provide this information on the basis it is treated as in-confidence and not be published in Hansard as per similar past requests. I am also willing to appear before the Committee to provide in-camera evidence in relation to the information.

The Commissioner's position as an independent statutory officer

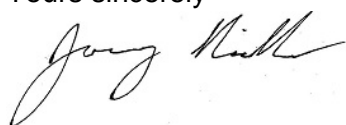
The Commissioner continues to be deeply concerned the second element of the Order has the potential to set an unpredictable and broad-ranging precedent.

The Commissioner reiterates the concerns previously raised about the provision of taxpayer information to the Parliament contrary to the taxation confidentiality laws, unless there are exceptional circumstances that justify it.

Taxation confidentiality ensures effective administration of the taxation system by encouraging taxpayers to disclose information voluntarily in a system that is dependent on self-assessment for its efficient operation. In the absence of taxpayer confidentiality the effective and efficient administration of the taxation system would be undermined by taxpayer reluctance to disclose information.

I have copied this letter to Senator Patrick and Senator Cormann.

Yours sincerely



Jeremy Hirschhorn
Second Commissioner – Client Engagement
20 December 2018



Attachment A: Order for the Production of Documents No 1108 – updated first element

29 November 2018

'The Commissioner of Taxation is ordered to provide to the Economics Legislation Committee, in relation to designated financial entities for the financial years from the year ended 30 June 2001 (or substituted accounting period) to the year ended 30 June 2016 (or substituted accounting period) inclusive:

- > *the combined designated information for an entire category of designated APRA regulated entities, by no later than 18 October 2018, and*
- > *the designated information provided for individual taxpayers, by no later than 29 November 2018.'*

Definitions

Term	Definition
Designated APRA regulated entity	<p>An entity listed under at least one of the following registered categories that is either</p> <ul style="list-style-type: none">> disclosed on the APRA website as at 15 August 2018> not currently disclosed, but registered historically (as at July 2013, July 2008 and/or July 2003) <p>Registered categories:</p> <ul style="list-style-type: none">a Authorised deposit-taking institutions under the following categories<ul style="list-style-type: none">i Australian-owned banksii Foreign subsidiary banksiii Branches of foreign banksb General insurance under the following category<ul style="list-style-type: none">i Authorised to conduct new or renewal insurance businessc Life insuranced Friendly societiese Superannuation under the following category<ul style="list-style-type: none">i Registrable Superannuation Entities (RSEs) designated as public offer fundsf Non-operating holding companies (NOHCs)

Term	Definition
Designated financial entity	<p>A designated APRA regulated entity that is required to lodge a tax return in its own right as it is not a member of a tax consolidated group or multiple entry consolidated (MEC) group</p> <p>OR</p> <p>The head entity of the tax consolidation group or provisional head entity of the MEC group, of which the designated APRA regulated entity is a member, as the head entity lodges a single income tax return on behalf of the group including that entity</p>
Significant designated financial entity	<p>A designated financial entity that has reported total business income (TBI) of greater than, or equal to, \$100 million in at least one of the designated financial years</p>
Designated financial years	<p>The financial years from the year ended 30 June 2001 (or substituted accounting period) to the year ended 30 June 2016 (or substituted accounting period) inclusive</p>
Designated information	<p>Information indicating if the significant designated financial entity has:</p> <ul style="list-style-type: none"> > lodged a corporate income tax return more than six months after the original due date for one or more of the designated financial years <ul style="list-style-type: none"> – This is referred to as ‘late lodgment’ in the results > as at 15 August 2018, not yet lodged a corporate income tax return for one or more of the designated financial years <ul style="list-style-type: none"> – This is referred to as ‘outstanding lodgment’ in the results
Designated aggregated information	<p>The combined designated information for an entire category of designated APRA regulated entities</p>
Designated taxpayer specific information	<p>The designated information provided for an individual taxpayer</p>

Designated aggregated information

Interpreting the results

- > Caution should be applied in interpreting these results, particularly for years prior to 2005 given its historical nature.
- > This document provides the updated information for significant designated financial entities between 2001 and 2016 inclusive following our verification processes to that provided in our original response dated 18 October 2018.
- > During the verification process, the ATO made reasonable attempts to contact all entities originally identified as in scope of the order to verify their information. For some entities, we:
 - were unable to make contact
 - received a nil response
 - were unable to verify their information, in some instances, because it pre-dated the required record keeping period.
- > As a result of the verification process, a total of 19 lodgments were removed from the aggregated information provided to the committee on 18 October 2018.
 - 18 lodgments were confirmed as being lodged within six months of the original due date, 11 of these were prior to 2005.
 - one entity was identified as not in scope of the order.
- > Note: the scope of Order does not take into consideration any extensions granted by the ATO for lodgment of a taxpayer's income tax return beyond six months of the original due date.

Currently registered APRA entities

- > On 15 August 2018, there were 224 significant designated financial entities
- > For the designated financial period, these entities lodged 3,226 income tax returns¹.
- > There were nil outstanding lodgments.
- > There were 41 late lodgments² (or 1.3% of total lodgments)³, including:
 - 32 during the period 2001 to 2004
 - nine during the period 2005 to 2013
 - none during the period 2014 to 2016.
- > For more detail, refer to tables 1 and 2 on page 5.

¹ Where the APRA entity was a member of a consolidated group, we counted the lodgment of the head company. Where multiple APRA entities related to a single head company, it was counted once for each APRA entity.

² For the purpose of this paper, a late lodgment is defined as one received more than 182 days after the original due date.

³ Figures based on system extracts and may incorrectly report some returns as late when actually due to ATO processing lags.

Historically registered APRA entities

- > There were 178 'significant designated financial entities' identified from APRA registers in 2003, 2008 and 2013 that are not currently registered.
- > For the designated financial period these entities lodged 2,459 income tax returns.
- > There were four outstanding lodgments (less than 0.2% of total lodgments from significant designated financial entities), attributed to two companies.
 - One of these companies has an outstanding lodgement for their final year of operation, the year they were deregistered with Australian Securities and Investments Commission (ASIC).
 - The other company has outstanding lodgements in the three years leading up to ASIC deregistration, however there is evidence to suggest the company was in liquidation during this period.
 - Both companies were deregistered by APRA and were not operating as financial entities in the years relating to the outstanding lodgments.
- > There were 78 late lodgments (or 3.2% of total lodgments).
 - 59 during the period 2001 to 2004.
 - 18 during the period 2005 to 2013.
 - One during the period 2014 to 2016.

For more detail, refer to tables 3 to 5 on page 6.

Tabled results for currently registered APRA entities

Table 1 | Aggregated results for ‘significant designated financial entities’ relating to currently registered APRA entities

	Entity Count	Total lodged	Outstanding	Late 2001-04	Late 2005-13	Late 2014-16	Total Late	% Late
Authorised deposit taking institutions	51	755	0	11	5	0	16	2.12%
- Australian owned banks	23	368	0	0	0	0	0	0.00%
- Branch of foreign banks	23	308	0	9	5	0	14	4.55%
- Foreign subsidiary banks	5	79	0	2	0	0	2	2.53%
General insurance	52	724	0	6	2	0	8	1.10%
Life insurance & friendly societies	30	443	0	7	0	0	7	1.58%
NOHCs	19	214	0	3	1	0	4	1.87%
Superannuation	72	1,090	0	5	1	0	6	0.55%
Total	224	3,226	0	32	9	0	41	1.27%

- > There were zero outstanding lodgments identified over the designated financial years, in relation to the 224 currently registered significant designated financial entities.
- > Over three quarters of the late lodgments were for 2001 to 2004 financial years. Our data does not distinguish between processed late or lodged late meaning, particularly for earlier years, late or non-lodgment may be a processing error.

Table 2 | Late lodgments, for ‘significant designated financial entities’ relating to currently registered APRA entities

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Authorised deposit taking institutions	3	3	3	2	1	0	1	0	1	0	1	1	0	0	0	0
- Australian owned banks	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
- Branch of foreign banks	2	2	3	2	1	0	1	0	1	0	1	1	0	0	0	0
- Foreign subsidiary banks	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
General insurance	3	1	1	1	0	0	0	2	0	0	0	0	0	0	0	0
Life insurance & friendly societies	4	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0
NOHCs	1	0	0	2	1	0	0	0	0	0	0	0	0	0	0	0
Superannuation	2	1	1	1	0	0	0	0	1	0	0	0	0	0	0	0
Total	13	6	6	7	2	0	1	2	2	0	1	1	0	0	0	0

Tabled results for historically registered entities

Table 3 | Aggregated results for 'significant designated financial entities' relating to historically registered APRA entities

	Entity Count	Total lodged	Outstanding	Late 2001-04	Late 2005-13	Late 2014-16	Total Late	% Late
Authorised deposit taking institutions	18	230	1	16	8	0	24	10.39%
- Australian owned banks	6	84	0	4	4	0	8	9.52%
- Branch of foreign banks	10	123	1	12	4	0	16	12.90%
- Foreign subsidiary banks	2	23	0	0	0	0	0	0.00%
General insurance	58	794	0	12	3	1	16	2.02%
Life insurance & friendly societies	17	245	3	6	0	0	6	2.42%
NOHCs	8	102	0	0	0	0	0	0.00%
Superannuation	77	1,088	0	25	7	0	32	2.94%
Total	178	2,459	4	59	18	1	78	3.17%

- > There were four outstanding lodgments identified over the designated financial years in relation to the 178 historically registered significant designated financial entities, which are not currently registered. These four outstanding lodgments represent less than 0.2% of the total lodgments by significant designated financial entities during the designated financial years.

Table 4 | Late lodgments, for 'significant designated financial entities' relating to historically registered APRA entities

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Authorised deposit taking institutions	4	4	4	4	2	4	2	0	0	0	0	0	0	0	0	0
- Australian owned banks	1	1	1	1	1	2	1	0	0	0	0	0	0	0	0	0
- Branch of foreign banks	3	3	3	3	1	2	1	0	0	0	0	0	0	0	0	0
- Foreign subsidiary banks	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
General insurance	5	3	1	3	1	0	0	0	1	0	0	1	0	0	1	0
Life insurance & friendly societies	4	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NOHCs	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Superannuation	10	7	6	2	4	1	0	0	2	0	0	0	0	0	0	0
Total	23	16	11	9	7	5	2	0	3	0	0	1	0	0	1	0

- > Over three quarters of late lodgements for historically registered significant designated financial entities were for the 2001 to 2004 financial years. Our data does not distinguish between processed late or lodged late meaning, particularly for earlier years, late or non-lodgment may be a processing error.

Table 5 | Outstanding lodgments, for 'significant designated financial entities' relating to historically registered APRA entities

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Authorised deposit taking institutions	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
- Australian owned banks	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
- Branch of foreign banks	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
- Foreign subsidiary banks	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
General insurance	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Life insurance & friendly societies	0	0	0	0	0	0	0	0	0	1	1	1	0	0	0	0
NOHCs	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Superannuation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0	0	0	1	1	2	0	0	0	0

- > There were four outstanding lodgments (less than 0.2% of total lodgments from significant designated financial entities), attributed to two companies.
 - One of these companies failed to lodge a part year income tax return in their final year of operation, the year they were deregistered with Australian Securities & Investments Commission (ASIC).
 - The other company failed to lodge in the three years leading up to ASIC deregistration, however there is evidence to suggest the company was in liquidation during this period.
 - Both companies were deregistered (licences revoked) by Australian Prudential Regulation Authority (APRA) and were not operating as financial entities in the years relating to the outstanding lodgements.