



Ref: Senate Order 1108

Senator the Hon Scott Ryan
President of the Senate
Parliament House
CANBERRA ACT 2600

Dear Mr President

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).'*

First element of the Order – aggregated information

I am the Deputy Commissioner in the Public Groups and International business line within the Australian Taxation Office (ATO). My business line has responsibility for the taxpayers who are the designated entities to whom this Order relates.

Accordingly, I attach our response to the first element of the Order (see Attachment A). This response provides 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).

The following points summarise our 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 periods before 2005. However, this may be an overstatement, as it is possible the lodgment date for paper based tax returns may be incorrectly recorded in the Australian Taxation Office (ATO) systems.
- Between 2001 and 2013, 136 income tax returns were lodged late (2.9% 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 only three entities with outstanding lodgments during the 2001 to 2016 period. These three had a total of five outstanding lodgments. All of these lodgments relate to years in which these entities were deregistered by APRA and either in liquidation or deregistered as a company during the year.

Second element of the Order – taxpayer specific information

The ATO's position in regard to complying with the second and final element of the Order is reiterated in points below. However, we are compiling information to comply with the Order in the event we are ultimately compelled to provide the taxpayer specific information.

1. The Commissioner's position as an independent statutory officer

The Commissioner is deeply concerned the second and last element of the Order as proposed 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.

2. Public interest immunity

The Commissioner is currently seeking advice on a public interest immunity claim based on the information requested in the Order.

It is noted previous broad-scale exceptions to the secrecy provisions have only been implemented through legislative processes with the attendant rigour, and even then usually only provide prospective information rather than historical.

In addition, the level of taxpayer culpability is relatively minor and the Commissioner submits it is insufficient to justify overriding taxpayer secrecy.

3. Other avenues open to the Senate

The Commissioner and I have previously testified as to the tax performance of large corporations and how the ATO robustly enforces the tax obligations of large corporates.

There are two other courses available to the Senate to more specifically obtain comfort in relation to the taxation affairs of any particular taxpayer, or group of taxpayers, which do not involve overriding the taxpayer secrecy provisions, the Senate could request:

- the Inspector General of Taxation to investigate the matters, and/or
- testimony from a particular taxpayer.

In relation to the latter, where a taxpayer provides testimony to the Senate concerning their own tax affairs in a way that is incorrect or fundamentally misleading, and would cause a lack of confidence in the system (including the failure of Senate oversight processes), the Commissioner is able to correct the record without breaching the secrecy provisions.

4. Provision “in camera”

In any event, if we are compelled to provide the information, we respectfully submit it be in-camera, received in-confidence, and not be published in Hansard as per similar past requests.

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

Yours sincerely



Jeremy Hirschhorn
Deputy Commissioner – Public Groups
Public Groups and International

18 October 2018



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

'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:

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

Definitions

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

Term	Definition
Designated financial entity	<p>A designated financial entity means a 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 and is either:</p> <ul style="list-style-type: none"> > 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>OR</p> <ul style="list-style-type: none"> > 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, where the head entity lodges a single income tax return on behalf of the group including that entity
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 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 results

Currently registered 'designated financial entities'

- > On 15 August 2018, there were 224 designated financial entities.
- > For the designated financial period, these entities lodged 3,226 income tax returns¹.
 - There are nil outstanding lodgements.
- > There were 55 late lodgments² (or 1.7% of total lodgments)³.
- > Most (42) late lodgments occurred during the period 2001 to 2004.
 - 13 occurred during the period 2005 to 2013.
 - There was zero during the period 2014 to 2016.
- > For more detail, refer to [Table 1](#) | Results for currently registered 'designated financial entities' and [Table 2](#) | Late lodgments by income year, for currently registered 'designated financial entities' on page 4.

Historically registered 'designated financial entities'

- > There were 178 '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 returns¹.
 - There were 82 late lodgments² (or 3.3% of total lodgments)³.
- > There are five outstanding lodgments (0.2% of total lodgments) that are attributed to three companies.
 - Two 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 and Investments Commission (ASIC).
 - One 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.
 - All three 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.
- > For more detail, refer to [Table 3](#) | Results for historically registered 'designated financial entities', [Table 4](#) and [Table 5](#) starting from 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 response, 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 be overstated, as it is possible the lodgment date for paper based tax returns may be incorrectly recorded in the ATO systems.

Tabled results for currently registered entities

Table 1 | Results for currently registered 'designated financial 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	16	6	0	22	2.91%
- Australian owned banks	23	368	0	0	0	0	0	0.00%
- Branch of foreign banks	23	308	0	12	6	0	18	5.84%
- Foreign subsidiary banks	5	79	0	4	0	0	4	5.06%
General insurance	51	708	0	9	4	0	13	1.84%
Life insurance & friendly societies	30	443	0	9	0	0	9	2.03%
Non Operating Head Companies	20	230	0	3	2	0	5	2.17%
Superannuation funds	72	1,090	0	5	1	0	6	0.55%
Total	224	3,226	0	42	13	0	55	1.70%

- > There were no outstanding lodgments identified over the designated financial years in relation to the 224 currently registered designated financial entities.
- > Approximately three quarters of late lodgements were for the 2001 to 2004 financial years.⁴

Table 2 | Late lodgments by income year, for currently registered 'designated financial entities'

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Authorised deposit taking institutions	5	5	3	3	1	0	1	0	1	0	1	1	1	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	3	3	3	3	1	0	1	0	1	0	1	1	1	0	0	0
- Foreign subsidiary banks	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0
General insurance	3	2	2	2	0	0	0	2	0	1	1	0	0	0	0	0
Life insurance & friendly societies	5	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0
Non Operating Head Companies	1	0	0	2	1	0	0	0	0	0	1	0	0	0	0	0
Superannuation funds	2	1	1	1	0	0	0	0	1	0	0	0	0	0	0	0
Total	16	10	7	9	2	0	1	2	2	1	3	1	1	0	0	0

⁴ However, this may be an overstatement, as it is possible the lodgment date for paper based tax returns may be incorrectly recorded in the ATO systems.

Tabled results for historically registered entities

Table 3 | Results for historically registered 'designated financial 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	9.92%
- Australian owned banks	6	84	0	4	4	0	8	9.52%
- Branch of foreign banks	10	123	1	12	4	0	16	11.85%
- Foreign subsidiary banks	2	23	0	0	0	0	0	0.00%
General insurance	58	794	1	12	4	1	17	2.12%
Life insurance & friendly societies	17	245	3	6	1	0	7	2.78%
Non Operating Head Companies	8	102	0	0	0	0	0	0.00%
Superannuation funds	77	1,088	0	26	8	0	34	3.13%
Total	178	2,459	5	60	21	1	82	3.30%

- > There were five outstanding lodgments identified over the designated financial years in relation to the 178 historically registered designated financial entities that are not currently registered. These five outstanding lodgments represent 0.2% of the total lodgments by designated financial entities during the designated financial years.

Table 4 | Late lodgments by income year, for historically registered 'designated financial 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	2	0	0	1	0
Life insurance & friendly societies	4	2	0	0	0	0	0	0	0	0	1	0	0	0	0	0
Non Operating Head Companies	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Superannuation funds	10	8	6	2	4	1	0	0	2	0	1	0	0	0	0	0
Total	23	17	11	9	7	5	2	0	3	0	2	2	0	0	1	0

- > Approximately three quarters of late lodgements for historically registered designated financial entities were for the 2001 to 2004 financial years.⁵

⁵ However, this may be an overstatement, as it is possible the lodgment date for paper based tax returns may be incorrectly recorded in the ATO systems.

Table 5 | Outstanding lodgments by income year, for historically registered 'designated financial 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	1	0	0
Life insurance & friendly societies	0	0	0	0	0	0	0	0	0	1	1	1	0	0	0	0
Non Operating Head Companies	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Superannuation funds	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	0	1	1	2	0	1	0	0								

- > The five outstanding lodgments relate to three designated financial entities and for designated financial years in the 2010 to 2014 period.
- > Two of these designated financial entities failed to lodge a part year income tax return in their final year of operation, the year they were deregistered with Australian Securities and Investments Commission (ASIC).
- > One designated financial entity failed to lodge in the three years leading up to ASIC deregistration. There is evidence to suggest it was in liquidation during this period.
- > All three designated financial entities were deregistered (licences revoked) by Australian Prudential Regulation Authority (APRA) and were not operating as designated financial entities in the years relating to the outstanding lodgments.



SENATOR THE HON MATHIAS CORMANN
Minister for Finance and the Public Service
Leader of the Government in the Senate

Senator Jane Hume
Chair
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Chair

I write with regard to Senate Notice of Motion Number 1108, an Order for the Production of Documents relating to designated financial entities, moved by Senator Patrick and agreed by the Senate on Tuesday, 16 October 2018.

The Government has provided documents indicating whether a designated financial entity, as defined by the Order, has:

- 1) Lodged a corporate income tax return more than six months after the original due date for one or more of the financial years from 30 June 2001 to 30 June 2016; or
- 2) As at 15 August 2018, not yet lodged a corporate income tax return for one or more of the financial years from 30 June 2001 to 30 June 2016.

In providing this information to the Committee by 18 October 2018, the Government has complied with section (1)(c)(i) of Senator Patrick's Order.

However, the Government claims public interest immunity over the documents referred to in section (1)(c)(ii) of the Order on the grounds that the disclosure of individual taxpayer information to the Committee will harm the public interest by undermining public confidence in taxation laws and taxation administration. Disclosure of the information will have a substantial adverse effect on the proper and efficient operations of the Australian Taxation Office (ATO). This is due to the precedential effect of overriding the taxation confidentiality laws, rather than the nature of the specific information itself.

Taxpayer confidentiality provisions, supported by criminal law sanctions, exist to protect inherently sensitive information on taxpayers' personal, private and financial affairs provided to the ATO, under compulsion, for the sole purpose of

administering the taxation laws. 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.

The public interest in maintaining confidentiality over taxpayer information is supported by the Department of Prime Minister and Cabinet's *Government Guidelines for Official Witnesses Before Parliamentary Committees and Related Matters* of February 2015 at paragraphs 4.11.2 and 4.11.3:

4.11.2 The existence of secrecy provisions in legislation does not provide an automatic exemption from providing information to the parliament unless it is clear from the provision that a restriction has been placed on providing information to a committee or a House of the parliament (section 37 of the Auditor-General Act 1997 is an example). The fact that the parliament has included secrecy provisions in legislation suggests, however, that an official may be able to put to a committee a satisfactory case for not providing requested information, at least in public hearings. If the official's case is not accepted by the committee and the official remains concerned about providing the information, it would be open to the responsible minister to make a PII claim in the manner outlined in sections 4.4 to 4.10.

4.11.3 In some instances it might be possible to meet a committee's request by removing information that identifies individuals.

The aggregate information already provided to the Committee in compliance with section (1)(c)(i) of Senator Patrick's notice of motion meets the requirements of paragraph 4.11.3. That aggregate information demonstrates that there are no exceptional circumstances justifying, and no public interest in requiring, the further production of individual taxpayer information, contrary to the taxation confidentiality laws and the long standing practices of Parliament on this issue.

There are other avenues readily open to the Committee to address its specific concerns without creating this potentially far-ranging precedent.

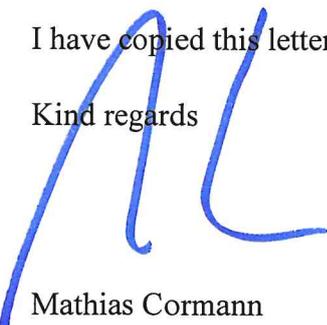
To more specifically obtain comfort in relation to the taxation affairs of any particular taxpayer, or group of taxpayers, which do not involve overriding the taxation confidentiality laws, the Senate could request:

- The Inspector General of Taxation to investigate the matters; or
- Testimony from a particular taxpayer.

In relation to the latter, where a taxpayer provides testimony to the Senate concerning their own tax affairs that is incorrect or fundamentally misleading, and would cause a lack of confidence in the system, the Commissioner is able to correct the record without breaching the taxation confidentiality laws.

I have copied this letter to Senator Patrick.

Kind regards



Mathias Cormann

Minister for Finance and the Public Service

5 November 2018