

CEO Update – December 2017

Dear Stakeholders,

The Board of Taxation met on Thursday 7 December for its final meeting for 2017. BDO Melbourne hosted the meeting and the Board thanks BDO for their hospitality.

The December meeting continued our discussion of the Board's stocktake of reports, Sounding Board ideas, and the future pipeline of projects. The Board also reviewed the ATO's self-assessment regulator performance framework report which is an annual process undertaken by many federal government regulators to ensure there remains a focus on reducing red tape.

Our December meeting also considered some preliminary findings of our review of a sample of published tax transparency reports. Some key lessons and observations are set out below.

On reflecting on the Board's 2017 achievements the Board noted that none of this would have been possible without the contributions from our stakeholders including our Advisory Panel members. On behalf of the Board I would like to thank you for your continuing support. We look forward to working with you in 2018.

Pipeline of possible projects

The Board continued to discuss the scope and content of a number of possible projects, including:

- A review of small business tax concessions;
- A comparison of the taxing rights for real property under Australia's double tax agreements and domestic laws;
- Certain issues relating to taxation in agriculture;
- New tax measures to promote innovation; and
- Tax settings and digital disruption.

Please contact the Board if you would like to share your views or be involved in any of these projects should they progress. Thank you to our stakeholders who have already reached out to express an interest in being involved in these projects. We keep a register of your interest so that we can contact you at the appropriate time.

Contingent consideration

The Working Group continues to engage on this project and the Board is grateful to the stakeholder engagement that has assisted to progress this work. The Working Group anticipates their work will be provided to Government for their consideration in the first quarter of 2018.

Sounding Board

The Board discussed several new ideas recently posted to Sounding Board and a number of ideas that are under consideration. Specifically there is an idea contributed by Michael Flynn QC regarding tax uncertainty arising from absolute entitlement. The Board completed a *Review of the tax treatment of bare trusts and similar arrangements* which raises these issues. This report is currently with the Minister for Revenue and Financial Services.

Please see the Sounding Board site to make comments on existing ideas or to post your own new ideas – <https://taxboard.ideascale.com/>. The Sounding Board continues to be a standing agenda item for every Board meeting.

Annual Report

The Board anticipates publishing its Annual Report of their 2016-17 activities in early 2018.

Stocktake of Reports

The Board met with stakeholders over recent weeks to hear potential priorities for reform and also to understand which (if any) of its outstanding reports and recommendations continues to be a priority for reform for the tax and business community.

The Board agreed to report back to the Minister for Revenue and Financial Services on the outstanding reports and recommendations given the tax and business community views of priorities.

Thank you again to those that shared their views. The Board hopes to provide some further feedback early in 2018.

Tax Transparency Code

In my last newsletter I noted that the Board will be selecting a number of published transparency reports for review. This preliminary review has now been completed and the Board wishes to share some observations with the Tax Community. Overall the Board is pleased with the improvement in transparency and notes that there are some good examples in the community publishing their transparency reports.

As at 1 December 2017, there were 120 signatories to the Voluntary Tax Transparency Code (the Code) and 89 signatories have published a tax transparency report. Twelve signatories are private companies and 4 signatories are Australian Government enterprises.

The Board estimates that this represents more than 50% of company tax payable and taxable income. However, this is not the only measure of a successful implementation.

The Board's secretariat completed a preliminary review of 21 out of the 89 companies who have published a Code report (roughly a quarter of the reports). Further details on the sample set are as follows:

- Large businesses reviewed: 18 out of a total population of 81
- Medium businesses reviewed: 3 out of a total population of 8
- Australian ultimate parent: 11 out of a population of 76
- Foreign ultimate parent: 7 out of a population of 10
- Dual listed companies: 3 out of a population of 3

Some key observations include:

- Although the Code provides signatories with the flexibility to choose the form of their disclosure, most groups in the sample selected opted to make their disclosure via a separate tax transparency report (18). Two companies made their disclosures within financial statements and one disclosed by 'other' means.
- Several 'separate' reports included cross references to notes to the financial statements.
- The Code does not require reports to be audited. Most reports in the sample set were not audited. Five reports were audited (this includes 2 disclosures by a separate report).
- The disclosure of the effective tax rate (ETR) is an area where there is a variety of disclosure practices and in some cases more than one disclosure. The Code permits ETRs to be calculated on different bases (for example total earnings vs underlying earnings) where the base is defined and any assumptions are disclosed. The variations in approach are likely due to the different reasoning around the form of ETR which is meaningful to stakeholders. For example, some may consider that an ETR calculated on underlying earnings rather than total earnings is more reflective of the ongoing ETR on the basis that one off or abnormal transactions are excluded from underlying earnings.

Fifteen (15) of the eighteen (18) reports sampled for large businesses included both the core element and optional elements of Part B.

A small number of groups in the sample selected disclosed their use of entities incorporated in tax havens.

Whilst the Board believes that the code should remain voluntary and flexible to encourage a culture of transparency which allows each entity to choose the best approach to publish their information, the Board considers that to be useful to the community:

- It is important for all elements of the minimum standard to be included in disclosures released in response to the code.
- It is also important that where groups are relying on multiple sources of information to meet the minimum standards within the code that links are provided to all relevant sources (for example where some disclosures are in a separate report and some are located in financial statements).

The Board will endeavour to walk through best practice publication of transparency reports at upcoming speaking engagements. Board members may also be available to speak at your events to provide further clarity.

The Board encourages you to adopt the Code and support and assist your clients to adopt it. It is as simple as sending us an email setting out your groups' intentions! For further information on the Code or to register your intention to adopt it, please contact us at taxboard@treasury.gov.au.

Merits of new DGR category for community foundations

The Board has submitted its advice to the Minister for Revenue and Financial Services in response to a request from the Minister to evaluate:

- whether a proposal for a new deductible gift recipient category for community foundations has merit; and
- if so the appropriate safeguards that would need to be in place if the proposal was to be implemented.

The Board thanks John Emerson, AM (former Board member and preeminent specialist in the law relating to philanthropic organisations) for his contributions as an adviser to the Board in progressing this advice.

The Board also thanks key stakeholders, including Philanthropy Australia, Australian Community Philanthropy and the Prime Minister's Community Business Partnership, for their contributions.

