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Public Groups and International
(New Measures and Government Relations)
Australian Taxation Office

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Dear Daniel

Consultation: Provision of general purpose financial statements by significant global entities

CPA Australia represents the diverse interests of more than 155,000 members in 118 countries. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders. We make this submission on behalf of our members and in the broader public interest.

CPA Australia notes that this consultation focuses on the operational aspects of taxpayer obligations arising from the Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015 (tax transparency legislation). Whilst we support improved tax transparency, we are disappointed that there was no public consultation in developing this legislation.

We note that one of the issues highlighted during the development of this legislation was the inadequacy of financial reporting by some large multinationals in providing sufficiently transparent insight into their financial affairs. Whilst we acknowledge that this is an issue that needs to be addressed, we believe more appropriate solutions could have been achieved through broader policy considerations and wider public consultation.

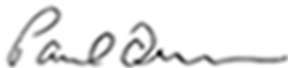
As CPA Australia and other stakeholders were not given an opportunity to provide feedback in the development of this legislation, we take this opportunity to highlight our concerns:

- In Australia, tax reporting and financial reporting serve different purposes. This issue was well researched and discussed in "Different purposes of tax and accounting", first published in 2003, by former Commissioner of Taxation Michael D'Ascenzo and Andrew England. The paper makes the point that tax and accounting systems exist for different reasons. The tax system is about collecting revenue for the community, while financial reporting exists "to help investors to make informed investment decisions". Accordingly, it is our view that seeking improvements to tax transparency through a legislative requirement to lodge general purpose financial statements (GPFS) with the ATO is conceptually flawed. It is also our view that more efficient and appropriate transparency outcomes could have been achieved through exploring a range of options as part of a broader policy development exercise.
- The financial reporting framework for companies in Australia is determined by the Corporations Act 2001 (the Corporations Act) and any changes to financial reporting by companies should primarily be addressed through the Corporations Act. The Australian Accounting Standards Board is currently leading a financial reporting framework project that is exploring statutory financial reporting by companies and other entities in Australia. The financial reporting changes brought about by the tax transparency legislation do not take these factors into account.

- An affected entity could lodge Special Purpose Financial Statements (SPFS) (under the Corporations Act) and GPFS (under the tax transparency legislation). If both SPFS and GPFS are lodged, it is not clear which financial statements will be considered to be lodged for the purposes of the Corporations Act.
- The financial reporting exemptions provided by the grandfathering provisions of the Corporations Act have been previously considered for removal as part of the 2006 Corporate and Financial Services Regulation Review. We supported removal of the exemption at that time as it was in the public interest to ensure that the law is equitable and that like entities are treated in the same manner. Whilst the tax transparency legislation will remove grandfathering for some companies, it will not do so in an equitable manner. This underscores our view that financial reporting changes are better addressed through the Corporations Act.
- The Australian Securities and Investments Commission (ASIC) charges a fee for access to financial reports lodged with it under the Corporations Act. We do not believe the public interest will be served if fees continue to be charged for access to the GPFS lodged under the tax transparency legislation. The situation could further deteriorate if the proposed privatisation of the operation of the ASIC data registry is followed through by the Government.

We provide our detailed responses to the consultation questions in the attached appendix. For further information, contact Ram Subramanian, Policy Adviser - Reporting on (03) 9606 9755 or ram.subramanian@cpaaustralia.com.au.

Yours sincerely



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Appendix

Consultation question (1)

As stated in our above cover letter, the requirement to provide GPFS to the ATO is based on a conceptually flawed approach and proceeding with the implementation of this requirement provides very little scope to minimise duplication of reporting.

We recommend clarifying the meaning of “group” for the purposes of this requirement. The accounting definition of a group is set out in AAS 10 *Consolidated Financial Statements* as “A parent and its subsidiaries”. The definition of a “consolidated group” for tax purposes is set out in the Income Tax Assessment Act 1997. It is not clear whether it is the accounting definition or the tax definition that is applicable. Clarifying the definition of “group” will also ensure entities other than subsidiaries such as associates and joint arrangements are not captured by these requirements.

“Annual global income” is defined as the annual income of an entity or a group of entities. We recommend clarifying whether annual income should be revenue (defined in the AAS as “income arising in the course of an entity’s ordinary activities”), or total income which can include other income in addition to revenue (e.g. fair value gains and losses on assets). Alternatively, if the definition of income is derived from tax legislation, this should be clarified.

Consultation questions (2), (3), (4), (5) & (6)

An entity required to prepare financial reports under Part 2M.3 of the Corporations Act is required to do so by applying Australian Accounting Standards. In our view, the requirement to prepare and provide GPFS to the ATO will cause such entities to apply all applicable Australian Accounting Standards (AAS) in the preparation of the GPFS.

The authoritative definition of GPFS within the AAS is provided in AASB 1053 *Application of Tiers of Australian Accounting Standards*. We believe financial reporting frameworks considered comparable to AAS could include those based on International Financial Reporting Standards (IFRS) and United States Generally Accepted Accounting Principles (US GAAP), and GPFS prepared and given to the ATO under these frameworks could be considered to meet the assumed objectives of the tax transparency legislation.

However, there are jurisdictions with less developed financial reporting frameworks that may not be considered equivalent or comparable to AAS. As the tax transparency legislation permits the preparation of GPFS under “commercially accepted accounting principles”, we believe these issues will create an uneven and inconsistent reporting regime that does not effectively meet the perceived objectives.

We also highlight the following additional points that we believe will undermine the perceived objectives:

- There is no requirement for the GPFS to be translated into English. As the intended users of the GPFS are Australian taxpayers, it is unclear how they will be expected to interpret GPFS provided in a language other than English.
- There is no audit requirement that would enable users to place reliance on an independent auditor’s assessment of whether the GPFS have been prepared in accordance with the relevant financial reporting framework.

Although we believe that in some cases the application of “commercially accepted accounting principles” could give rise to inconsistencies, CPA Australia supports the second view in paragraph 17. We do not think it is practical to expect an affected subsidiary to impose a requirement on an overseas parent to prepare GPFS based on AAS to meet the subsidiary’s obligations under the tax transparency legislation. Accordingly, we support the view, which allows an affected entity to submit consolidated GPFS prepared in accordance with commercially accepted accounting principles.

Additional issues are likely to arise when an affected entity chooses to submit consolidated GPFS prepared by an overseas parent when the reporting date of the parent falls after the income year-end of the affected entity. For example, an entity may not have sufficient time to submit the consolidated GPFS of the group it belongs to, if the reporting date for the consolidated GPFS falls six months after the income year end of the affected entity. To address this we suggest clarifying the meaning of “...the financial year most closely corresponding to the income year” to ensure this does not give rise to practical difficulties.

An entity currently lodging Special Purpose Financial Statements (SPFS) to comply with its financial reporting requirements under the Corporations Act may continue to do so. If the entity is affected by the tax transparency legislation, it will also be required to lodge GPFS, either with the ATO or ASIC. It is possible an entity would have to lodge both SPFS (as required by the Corporations Act) and GPFS (as required by the tax transparency legislation). If both SPFS and GPFS are lodged, it is not clear which financial statements will be considered to be lodged for the purposes of the Corporations Act.

Consultation questions (7), (8) & (9)

We support the provision of GPFS electronically as a PDF document. We support the inclusion of Yes/No question in the income tax return, and a follow-up question to a “Yes” answer to confirm whether a GPFS has been given to ASIC.

Consultation questions (10)

We do not believe the process can be streamlined by facilitating the provision of GPFS directly to ASIC through the tax transparency legislation. A better approach to address this would have been through reforms to the Corporations Act and its financial reporting requirements.

A separate complication arises due to the fact that not all corporate tax entities that will be affected by the tax transparency legislation are also subject to the reporting requirements of the Corporations Act. It is not clear how ASIC, which is primarily responsible for the oversight of financial reporting under the Corporations Act, will perform its function as a corporate regulator in cases where the affected entity is not subject to the Corporations Act.

Consultation questions (11), (12) & (13)

We have highlighted our concerns above, some of which can be addressed through further guidance.