

CPA Australia Ltd
ABN 64 008 392 452

Level 20, 28 Freshwater Place
Southbank VIC 3006 Australia

GPO Box 2820 Melbourne
VIC 3001 Australia

T 1300 737 373

Outside Aust +613 9606 9677

cpaaustralia.com.au

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Mr Michael Drogaris
Private Groups and High Wealth Individuals
Australian Taxation Office

Online: reportabletaxposition@ato.gov.au

Dear Mr Drogaris

Expansion of the Reportable Tax Position Schedule to large private companies and corporate groups

CPA Australia represents the diverse interests of more than 164,000 members working in 150 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia has been supportive of the ATO's efforts to monitor private group tax compliance through initiatives such as the Top 320 Tax Performance program, tailored engagement approaches, tax governance assessments and justified trust. Feedback from members indicates that these initiatives have led to better mutual understanding of expectations, a better understanding of tax risks, improved dialogue and enhanced trust between business, advisors and the ATO.

However, the proposal to expand the Reportable Tax Position Schedule (RTPS) reporting obligation to large private groups raises concerns, in particular:

- Limited timeframe for implementation and consultation
- The purpose and intended outcomes of the RTPS expansion to large private groups is unclear
- Increased compliance burden on private groups and advisors, many of whom have no in-house tax function
- Limited or no awareness of the RTPS amongst private groups, and limited existing capability or capacity to respond
- Application of products developed for public and multinational groups to private groups
- Lack of clarity as to how group turnover thresholds are calculated
- Misalignment of the \$25 million RTPS threshold, the \$50 million base rate entity threshold and the \$50 million large proprietary company threshold in the Corporations Act, and
- Difficulty in identifying and disclosing positions established in prior years, especially where advisors have changed.

Increasing compliance and reporting burdens come at a significant cost to the taxpayer. The RTPS requires considerable time to ensure disclosures are correct and care must be taken not to make false and misleading statements. Systems and processes will require change in order to efficiently classify and organise the relevant information for RTPS reporting processes. For the majority of private groups, this work will fall to advisors and in our view is not a value-add proposition for their clients.

CPA Australia suggests that if changed tax governance behaviours within private groups are the desired outcome of this proposal, then there are better mechanisms to achieve this (e.g. supporting private groups to build strong processes and controls). The ATO should continue its educative approach and focus on communicating the business benefits of strong tax governance. This can be delivered through existing continuous engagement approaches, rather than the proposed tax schedule. It must also be recognised that private groups generally operate in a different manner to public and multinational groups, with distinctly different tax issues and governance challenges that are not acknowledged in this proposal.

The balance between self-assessment and administrative oversight should also be maintained. The ATO already collects a large volume of private group data on existing returns and schedules, with additional information provided through the Top 320 engagements and other review and rulings processes. CPA Australia questions the potential marginal value of the RTPS data and whether any additional revenue collected or assured compensates for the lost productivity and cost to business of its completion. An alternative and more targeted approach would be to impose the RTPS requirement on high-risk large private groups, or to obtain this information through existing processes including review and audit.

Further specific responses to ATO questions are included in the Attachment.

CPA Australia recommends that:


- Further consultation is undertaken with the goal to minimise the regulatory burden and streamline reporting, and
- An independent review of the RTPS by the Board of Taxation be undertaken to assess its suitability for private groups.

If the ATO proceeds with the RTPS expansion, CPA Australia recommends that:

- Implementation is delayed until at least the income year ended 30 June 2021
- The \$25 million turnover threshold be increased to \$50 million
- The requirement to lodge is restricted to high-risk large private groups
- Exemption for Category C questions and certain general administrative practices are given to private groups
- Affected private groups and their advisors are notified by the ATO of their requirement to lodge prior to the commencement of the relevant income year, and
- Education and support are provided to affected private groups and their advisors.

If you have any queries do not hesitate to contact Gavan Ord, Manager Business and Investment Policy at CPA Australia on gavan.ord@cpaaustralia.com.au or 03 9606 9695.

Yours sincerely



Dr Gary Pflugrath CPA

**Head of Policy and Advocacy
CPA Australia**

ATO consultation questions

1. *Does the proposed start time of the income year ended 30 June 2020 give sufficient time to prepare, considering the forms will be due in early 2021?*

No. The proposed timeframe is not reasonable and the introduction of the RTPS should be deferred to the 2021 income year at the earliest. The proposed 2020 income year start time exposes private groups to the RTPS for the first time after the commencement of the income year. Transactions are already occurring and introducing an obligation during the income year creates reverse workflow and burden on advisors.

Taxpayers require notice of the rules and expectations and should be given reasonable time to put the necessary processes in place to manage the requirements. A longer implementation timeframe enables private groups to plan and engage with their advisors, as well as to assess all transactions that may be required to be reported on the RTPS. Many private groups do not have an in-house tax function, therefore they will be dependent on their advisors for implementation.

The roll-out of the RTPS for large public and multinational groups was staggered over multiple years and after an extensive prior period of early engagement. If implemented, a similar approach should be taken for large private groups.

CPA Australia notes that the RTPS does not require quantitative data, but rather a qualitative assessment of tax positions having regard to relevant authorities up to the point of being “about as likely to be correct as incorrect”. A forward-planning approach enables private group to document tax positions in a manner suitable for RTPS disclosures and to develop processes that are tailored to RTPS requirements.

Clarification is also required as to the treatment of early substituted accounting period balancers.

2. *Do you have any concerns with the proposed thresholds that determine who in the large private market will be required to lodge the RTP schedule?*

Yes. It is difficult for businesses and their advisors to identify whether they are captured by the defined threshold. Depending on the ownership structure of the group, there may be difficulty in determining the total turnover of the economic group.

The \$25 million total business income threshold is too low for private companies. It should match the large proprietary company threshold in the Corporations Act, which was increased to annual consolidated revenue of \$50 million from 1 July 2019. This also aligns with small business thresholds of \$50 million for tax purposes such as the instant asset-write off and base rate entities.

Alternatively, it may be more appropriate to apply the RTPS expansion to the Top 320 private groups to better align to the current Private Groups and High Wealth Individuals (PGH) tax performance program. This will mirror the approach taken in the Public Groups and International (PGI) market under its Top 100 tax performance program.

3. *Are there any concerns with applying the income tests during the year of lodgment?*

Yes. For economic groups that are close to the threshold, the total turnover of the group may not be known until the accounts are prepared. Clear guidance on determining partnership and trust ownership for the purposes of the income tests should also be given.

As part of the expansion, the ATO should instead notify large private groups of their entities that fall under the large business definition and are required to lodge RTPS, given the potential for differences with the Group Wealth Structure definitions used by PGH.

4. *Under what circumstances should the ATO provide an exemption for the lodgment of an RTP schedule or the disclosure for certain types of disclosures specific to large private groups?*

Public and multinational groups are exempt from lodging an RTPS where an Annual Compliance Agreement is in place. An equivalent product should be offered to large private groups and an exemption provided for those who sign up.

An exemption should be considered for large private groups that are not considered high-risk.

CPA Australia members have also questioned whether the RTPS lodgment requirement should apply if there are no international related party dealings. Certainly, many large private groups do not have the same value or complexity of international related party dealings and the information provided on the International Dealings Schedule should be sufficient. An exemption from Category C questions should be provided to private groups.

The ATO has long-accepted certain general administrative practices for private groups. The use of bare trusts and corporate nominees are two common examples. The consultation process should include the identification of general administrative practices related to private groups to both:

- provide RTPS-lodgers with a checklist, and
- determine whether some, if any, should be exempt from disclosure due to their prevalence.

5. *Do you see any challenges in applying RTP Category C questions to companies in large private groups such as areas of tax law that may not be suitable for an RTP Category C question?*

With the exception of questions 13, 19 and 21, the RTPS Category C questions will not be relevant to the majority of large private groups. Most of the questions are targeted at multinational groups, acknowledging a small number of private groups will also have similar arrangements.

The broader concern is the growth in the scope and volume of Category C over time. Given the complexity of the Australian tax system, it is reasonable to presume that the inclusion of private groups will lead to the addition of questions that reflect identified risks related to large private groups. CPA Australia queries how this process will be managed and what actions will be taken to ensure that the RTPS does not become unwieldy or even more time-consuming.

By deferring the expansion, consideration can be given to the most appropriate questions for large private groups that are not otherwise collected, and ensuring that the RTPS requirements strike the right balance between self-assessment and administrative oversight. Outputs might include a tailored Category C or new section for private groups.

6. *What are the difficulties in detecting and disclosing arrangements that were set up in earlier years?*

Many private groups do not have in-house tax functions and they often change advisors or firms. In operating their businesses, private groups will also commonly bring tax advisors on board later in their dealings. As such, to change the tax governance behaviours of private groups and assure tax revenues, a forward-looking focus is ideal. This enables advisors to work with their large private group clients, establish early engagement processes and ensure tax positions are documented to comply with RTPS requirements.