

Tax secrecy and transparency: ATO to report information about companies with a total income of \$100 million or more

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On 1 July 2015, laws requiring the Australian Taxation Office (**ATO**) to publish the ABN, company name, total revenue, declared taxable income and tax payable of public and proprietary companies with a total income of \$100 million or more came into effect. The ATO has indicated that the first report will likely be published in late November or early December 2015, covering information from the 2013-14 income year.

The objectives of these tax disclosure laws were recognised in the Explanatory Memorandum to the Bill as follows:

- To discourage large corporate tax entities from engaging in aggressive tax avoidance practices; and
- To provide more information to inform public debate about tax policy, particularly in relation to the corporate tax system.

Disclosure of this information is not new to companies. Current financial reporting requirements in the *Corporations Act 2001* currently force public and large proprietary companies to disclose prescribed information about their affairs and financial position. A proprietary company is “large” if it satisfies at least two of the following requirements:

- The consolidated revenue for the financial year of the company and any entities it controls is \$25 million or more;
- The value of the consolidated gross assets at the end of the financial year of the company and the entities it controls is \$12.5 million or more; and
- The company and the entities it controls have 50 or more employees at the end of the financial year.

Companies may have structured their operations in such a way as to keep their gross assets and number of employees under this threshold in order to circumvent the requirement of public disclosure. However, the tax disclosure laws may operate to require public disclosure, even in such circumstances.

The Labor Government introduced these tax disclosure laws before it lost power. Business lobby groups are pushing hard for the Abbott Government to dump these laws, arguing that such information may convey a misleading impression of company tax affairs. The Abbott Government has not specified whether they will retain the laws, however have indicated that the tax disclosure laws may be watered down. Commentators have highlighted some concerns about the tax disclosure laws, namely:

- These disclosures may compel companies to restructure their operations in order to fall below the threshold for disclosure;
- Disclosing this information impacts on the personal privacy and security of companies and directors;
- Disclosing this information can reveal commercially sensitive information and undermine a

- company's ability to engage in proper commercial negotiations; and
- These disclosures will increase compliance costs for businesses in having to justify any tax minimisation strategies.

Companies and directors should actively manage any reputational risk arising from increased scrutiny. Companies and directors must be ready for such scrutiny and should plan ahead, as once such information is publically available the onus is shifted to them to explain tax minimisation strategies. Companies and directors should review whether current structures and transfer pricing policies might expose the company to potential criticism or misinterpretation.

For more information and discussion, please contact HopgoodGanim Lawyers' [Taxation](#) team.

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