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General Manager
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Attention: Philip Akroyd

By email: taxlawdesign@treausury.gov.au

Dear Philip

Improving tax compliance: Enhanced third party reporting, pre-filling and data matching

Thank you for the opportunity to provide our comments on the draft legislation for the third party reporting regime (the ED).

The Property Council is the peak body for owners and investors in Australia's $670 billion property investment industry. We represent, owners, fund managers, superannuation trusts developers and investors across all four quadrants of property investments: debt, equity, public and private.

Consistent with our earlier submission in response to the February 2014 Treasury discussion paper, industry is keen to ensure that the proposed third party reporting and data matching regime does not result in unnecessary and increased levels of compliance and administration for property funds and property transactions.

We are supportive of the data matching initiative, however, the current approach requires property trusts to collect information for three separate reporting regimes – third party reporting, FATCA and the upcoming Common Reporting Standard (CRS) framework – and much of the data is better sourced elsewhere.

Secondly, the proposed data collection framework will lead to inadvertent and unfair discrimination against trusts compared to companies because it erroneously ignores unlisted companies but applies to unlisted trusts. Unnecessary data will be collected, for example, in relation to wholesale funds.

The uncertainty around what information needs to be collected, and how the information is to be reported, raises the query as to whether a 1 July 2016 start date is appropriate.

Each of these issues is discussed further below.

1. Interaction between third party reporting, FATCA and CRS

As noted above, the proposed third party reporting framework rules must be considered in conjunction with FATCA and CRS to ensure the required data is being collected efficiently by the party best sourced to collect it.

When Government originally proposed the third party reporting policy, both FATCA and CRS were at very early stages in their development. In simple terms, third party reporting is about collecting and reporting tax information on Australian tax residents, while FATCA and CRS are designed to collect and report information about US residents and non-residents respectively.

Relevantly for listed and unlisted property trusts, the three reporting regimes – third party reporting, FATCA and CRS – will require the collection and reporting of a range of information, including:

- unitholder identity information;
- details of sales/purchases of securities; and
- corporate events such as returns of capital.

The property trust itself will not always be best placed to collect and report this information – for example, for listed securities, brokers are generally best placed to retrieve unitholder identity information. For the purposes of the third party reporting framework, the ATO has recognised this and recommended that ASIC and brokers (rather than the listed investment entity itself) report the required information for any transactions that take place on the ASX. This can be contrasted with FATCA (and potentially CRS), which requires the listed investment entity to provide this information.

There needs to be streamlining of the process to bring the systems into one, and task data collection to the organisations best equipped to collect the information.

Recommendation: Industry recommends that Government review the reporting requirements under third party reporting, FATCA and CRS holistically, and design a comprehensive data collection and reporting framework that will achieve the objectives of all three regimes in the most efficient and practical manner possible.

A holistic approach to the three reporting regimes will:

- ensure there is clarity on:
  - what data is required to be collected under each of the three reporting regimes;
  - who is best placed to collect the data, and should therefore have the obligation to collect and report the data; and
  - the timeframe and form in which data is to be reported to the ATO;
- eliminate any duplication or conflicts with data requirements and allow participants (including managed funds, share registries, banks, brokers, ASX, ATO, and ASIC) to build appropriate data collection and reporting tools to meet their obligations; and
- lead to the development of a workable framework that has the least impact on listed investment markets, brokers, investors and government.

2. Reporting entities – aligning unit trusts with companies

The proposal is meant to apply to listed entities only but draws in unlisted trusts and ignores unlisted companies.

Unit trusts are commonly used in Australia. There are three broad categories of unit trusts:

- listed unit trusts – where a unit trust is 'listed', or forms part of a listed stapled security;
- unlisted widely held unit trusts – some unit trust investments are offered to the general public. Although not 'listed', the investment is made by subscribing for new units and is realised through obtaining a redemption of those units. The issue and redemption is undertaken by the unit trust (as administered by the fund manager); and
- unlisted wholesale unit trusts – unit trusts are also used as a vehicle for wholesale collective investments (with access to this form of investment limited to large sophisticated / institutional investors) and in 'private' investment situations.

Recommendation: The design of the reporting obligations should recognise the different types of unit trusts to ensure the treatment of trusts is aligned with companies.

In particular, the rules should be restricted to listed unit trusts (or trusts that form part of a listed stapled security). This will ensure there is a level playing field for all investment vehicles, and will not inadvertently draw all unit trusts into the regime.

At a minimum, unlisted wholesale unit trusts should be carved out of the data reporting requirements as the broad aim of third party reporting is to pre-fill tax information for individual taxpayers. By definition, an investor in an

unlisted wholesale unit trust is an institutional investor, not an individual investor. The regime should be designed to collect data at the final layer of the ownership chain. As such, managed funds with only institutional investors will not have any value adding data to report.

3. Scope of data to be collected – greater clarity on what information is needed

The exposure draft legislation provides very broad parameters on the type of information that will need to be collected and reported, and leaves it open to the Commissioner's discretion to determine the actual scope of data to be collected. This gives rise to significant uncertainty for industry on what will be required under the regime.

For example, the operative provision (s.396-55) states that the entity must report transactions that happened during the financial year and 'such other period as the Commissioner specifies by legislative instrument'.

Recommendation: Clarity should be provided in the legislation on when the Commissioner may issue such a legislative instrument. In particular, the legislation should explicitly exclude the ability for the Commissioner to request prior year information (eg details of all prior year tax deferred distributions for current unitholdings) to be prepared.

Any requirement to report historical information will force the unit trust to:

- identify the time at which a particular unit was acquired; and
- determine the previous distribution amounts applicable to the unit sold.

The cost imposed on unit trusts to undertake such a task would be significant and would hinder the ATO's data matching processes.

In addition, additional guidance is required in the legislation and EM as to the types of "corporate events" that will trigger a data reporting requirement for listed companies and trusts. This term is currently not defined in the ED or EM.

Recommendation: The ED and EM should include a clear definition of "corporate events", which could include returns of capital, buybacks, additional allotments, mergers, demergers and stapling/destapling transactions.

4. Format in which data is to be reported – greater clarity on what will be required

Further guidance is required in terms of what constitutes a "report in the approved form".

The ATO should work closely with industry to understand whether the required information is already being captured by their internal systems and databases, and if so the way in which it is captured.

For example, for unit trusts, the majority of the information required under third party reporting (e.g. distributions, returns of capital), is already collected and reported to unitholders as part of their distribution statements and annual tax statements. This information is also provided to the ATO as part of the Annual Investment Income Report (AIIR).

Recommendation: The third party reporting framework should incorporate existing reporting mechanisms such as AIIR, and not impose additional and unnecessary compliance costs on industry, as this may compromise the efficiency of the regime.

5. Timeframes in which data is to be reported – greater clarity on what will be required

Under the proposed legislation, reporting is required by 31 July for entities with a 30 June year end. This does not align with the current reporting dates for managed funds, which have until 31 October to lodge the AIIR.

Recommendation: As stated above, it is critical that the third party reporting framework align with existing reporting mechanisms, otherwise the new measures will require significant changes to ordinary business practices for managed funds.

The legislation also does not deal with the impact of third party reporting regime on entities with a substituted accounting period. Clarity should be provided on how these rules will apply to these entities.

6. Start date for the third party reporting regime

A holistic approach to third party reporting, FATCA and CRS also provides the opportunity to better align the start date for collecting and reporting data.

In particular, a proposed 1 July 2016 start date for the third party reporting framework will be challenging for market participants given there is still a lack of clarity on what has to be reported, who has to report, and the form in which data is to be reported.

Recommendation: A better approach could be to align the start date with CRS, which is 1 January 2017. If Government continues with a 1 July 2016 start date, it will be critical that the ATO works closely with industry to develop a "best endeavours" approach for the first year.

We are keen to meet and talk through our industry recommendations at your earliest convenience.

Please let us know when you would be available and in the meantime, if you have any queries, please do not hesitate to contact Belinda Ngo (02 9033 1929) or myself.

Yours sincerely

Andrew Mihno
Executive Director – International & Capital Markets