



Cover Memo

Project:	Tax disputes - Proposed response to Minister's request to consider disclosure of tax disputes	Meeting	AASB June 2017 (M158)
Topic:	Cover memo	Agenda Item:	4.0
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		Decision-Making:	Medium/Low
		Project Status:	Project planning

Introduction and objective of this paper

- 1 On 3 April 2017, in a letter to the AASB, the Minister for Revenue and Financial Services requested that the AASB consider proposals to examine whether to amend the Australian Accounting Standards to require entities to disclose details of their taxation disputes in financial statements.
- 2 The objective of this paper is to obtain Board decisions on the preliminary response to the Minister's request.

Attachments

Agenda paper 4.1: Letter from Minister for Revenue and Financial Services, The Hon Kelly O'Dwyer, dated 3 April 2017.

Summary of staff recommendations

- 3 The staff recommend the following:
 - (a) any proposed Australian-specific modifications for for-profit entities in respect of entities disclosing details of tax disputes in financial statements would need to be assessed against the *For-Profit Entity Standard-Setting Framework* (presently in draft form, to be considered by the Board at June 2017 meeting);
 - (b) staff discuss the matter with the New Zealand Accounting Standards Board (NZASB) staff to ascertain if similar issues have been raised in New Zealand, and if yes, what decisions were made by the NZASB in relation to those issues; and
 - (c) staff conduct outreach with relevant stakeholders to determine who the users of information relating to tax disputes might be, the type of information users

would consider useful, and constraints faced by preparers in disclosing tax dispute information.

Background

- 4 In recent years, scrutiny over the tax affairs of multinational entities has intensified in Australia, with increased public interest in tax disputes between such entities and the Australian tax authorities. Although the Australian Government has enacted measures, such as the voluntary Tax Transparency Code¹ and tax law requiring the Australian Taxation Office to publicly disclose certain tax attributes of entities meeting turnover thresholds² to improve transparency over tax affairs of entities, these measures do not mandate explicit disclosure of tax disputes with tax authorities.
- 5 The letter from Minister O'Dwyer states that under Australian income tax law, the Commissioner of Taxation cannot disclose taxpayer information, including amounts of tax payable by taxpayer entities raised under amended assessments following tax audits or similar reviews. The letter from Minister O'Dwyer further states that this prohibition extends to the Australian Government.
- 6 Accordingly, there are concerns that the existing suite of disclosure requirements, encompassing law and other guidance, do not address the general public's transparency concerns regarding the specific matter of tax disputes.
- 7 From an accounting perspective, AASB 112 *Income Taxes* sets out the disclosure requirements pertaining to income tax for entities preparing general purpose financial statements (GPFS). AASB 112 does not require entities to make explicit disclosures regarding tax disputes with tax authorities, however AASB 112.88 does require entities to assess whether disclosure of contingent liabilities (or assets) arising from tax disputes in accordance with AASB 137 *Provisions, Contingent Liabilities and Contingent Assets* is necessary.
- 8 In this regard, the letter from Minister O'Dwyer dated 3 April 2017 requested that the AASB examine whether to amend the Australian Accounting Standards to require entities to disclose details of their tax disputes in financial statements. The Minister's objective with respect to the disclosure of tax disputes in financial statements is to enhance public confidence in the administration of tax system, and also provide relevant tax dispute information to investors and other users of financial statements, such as lenders and other suppliers.

Staff analysis

- 9 Staff think that, in developing options on how the Australian Accounting Standards could be amended to require entities to disclose details of tax disputes in financial statements, the following are relevant to consider:

¹ The Tax Transparency Code can be accessed at the Board of Taxation's website:
<https://cdn.tspace.gov.au/uploads/sites/74/2016/08/tax-transparency-code.rtf>

² Section 3C of the *Taxation Administration Act 1953*.

- (a) The *For-Profit Entity Standard Setting Framework*;
- (b) Collaboration with the New Zealand Accounting Standards Board; and
- (c) Stakeholder engagement.

For-Profit Entity Standard-Setting Framework (currently in draft form)

- 10 The AASB's draft *For-Profit Entity Standard-Setting Framework* (Framework) will be considered by the Board in June 2017 meeting. The draft Framework sets out the AASB's approach to setting accounting standards for for-profit entities in Australia and is underpinned by the following assumptions:
- (a) IFRS Standards are developed by an expert standard setting board (i.e. the IASB) and its views represent international consensus on best practice for publicly accountable for-profit entities
 - (b) IFRS Standards are developed following a stringent due process; and
 - (c) like transactions and events should be accounted for in a like manner for all types of entities (i.e. transaction neutrality) unless there is a compelling reason not to do so.

Broadly, the draft Framework states that the AASB would use IFRS Standards as the starting point to enable publicly accountable Tier 1 entities to make an unreserved statement of compliance with IFRS and modifications to IFRS Standards might only be appropriate if there are compelling reasons.

- 11 In this regard, the draft Framework states:

"...modifications are made if adoption would result in loss of investor confidence in the Australian economy, to address, jurisdiction-specific user needs, to address public interest issues relevant to financial reporting, or to address public sector issues."

- 12 In addition, the issue identified must be sufficiently significant to warrant modifications to IFRS Standards. The factors to be considered in assessing the magnitude and pervasiveness of the issue are:
- (a) significance to the financial statements;
 - (b) significance of a transaction, event, circumstance on the financial statements taken as a whole;
 - (c) whether a modification will increase or decrease internal consistency within IFRS Standards; and
 - (d) the costs of the specific change.
- 13 Staff think that any proposed modifications to the Australian Accounting Standards for for-profit entities in respect of entities disclosing details of tax disputes in financial statements should be assessed against the draft Framework to ensure:

- (a) there are compelling reasons for the modifications; and
- (b) the issue(s) are sufficiently significant as outlined at paragraph 12.

This can be done once the *For-Profit Entity Standard-Setting Framework* is finalised by the Board.

Discussion with NZASB

- 14 In August 2009, the Prime Ministers of Australia and New Zealand signed the *Joint Statement of Intent: Single Economic Market Outcomes Framework (JSI)*. The intent of the JSI is to provide for entities operating in both Australia and NZ to use one set of financial reporting standards, allowing for one set of financial statements to be acceptable in both jurisdictions.³
- 15 Given the objective of minimising differences with NZ for for-profit entities, any proposals for modifying IFRS Standards requires discussion with NZASB and/or staff and a compelling specific legislative or jurisdictional rationale for differences.
- 16 Accordingly, in considering what modifications, if any, should be made the Australian Accounting Standards in respect of tax dispute disclosures in financial statements, staff think it is necessary to liaise with the NZASB⁴ staff to:
 - (a) consider any research or stakeholder consultation undertaken by the NZASB in relation to the disclosure of tax disputes; and
 - (b) ensure that any proposed modifications to the Australian Accounting Standards are consistent with the objective of the JSI unless there is a compelling specific legislative or jurisdictional rationale for differences.

Stakeholder consultation

- 17 In order to ascertain what modifications, if any, should be made the Australian Accounting Standards regarding the disclosure of details of tax disputes, staff think outreach with relevant constituents is necessary. The aim of outreach with relevant stakeholders should form the basis of determining, in the context of disclosure objectives outlined at paragraph 8:
 - (a) who the users of disclosures pertaining to tax disputes would be, and whether the users include regulatory bodies (e.g. Australian Taxation Office, or the Australian Securities and Investments Commission);
 - (b) what information in relation to tax disputes users would find helpful, and how the information would be used; and

³ ED 277 *Reduced Disclosure Requirements for Tier 2 Entities*:
http://www.aasb.gov.au/admin/file/content105/c9/ACCED277_01-17.pdf

⁴ A verbal update will be provided to Board members in relation to preliminary discussions held between AASB Staff and the NZASB.

- (c) details of tax disputes that entities currently disclose (both within and outside of financial statements), information that preparers could disclose and commercial sensitivities (if any) in relation to the disclosure of tax disputes.

Question to Board members

Q1 Do Board members agree that:

(a) any proposed Australian-specific modifications should be addressed against the Framework?

(b) staff discuss the matter with the NZASB staff?

(c) staff conduct outreach with relevant stakeholders?

Q2 Are there any other matters the Board thinks should be considered in determining whether financial statements should include disclosure of tax disputes?