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## Tax complexity in Australia: A survey-based comparison to the OECD average

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**Tax Complexity in Australia –  
A Survey-Based Comparison to the OECD Average**

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# **Tax Complexity in Australia – A Survey-Based Comparison to the OECD Average**

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## **Abstract**

This article comprehensively reviews Australia's corporate income tax complexity as faced by multinational corporations (MNCs) and compares it to the average of the remaining OECD countries. Building on unique survey data, I find that the Australian tax code is considerably more complex than the OECD average, which is mainly due to overly complex anti-avoidance legislation, such as regulations on transfer pricing, general anti-avoidance or controlled foreign corporations (CFC). In contrast, Australia's tax framework, which covers processes and features such as tax law enactment or tax audits, is close to the OECD average. A more granular analysis yields further interesting insights. For example, excessive details in the tax code and the time between the announcement of a tax law change and its enactment turn out to be serious issues in Australia relative to the remaining OECD countries.

## **Keywords**

Tax Complexity, Corporate Income Tax System, Survey, Australia, OECD Countries

## **JEL Classification**

H20, H25, C83, O57

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## 1. Introduction

Tax complexity is a topic that has a long history in Australia and was often the subject of both political as well as academic discussions. Approximately ten years ago, a comprehensive tax system review, known as the Henry Review, was released and was intended to generate strategies and visions for the development of the Australian tax system over the next 40 years.<sup>1</sup> Considerable attention was paid to the reduction of tax complexity, i.e., the simplification of the tax system. However, the recent literature, such as Tran-Nam et al. (2016), highlights that relatively little progress has been made in simplifying the Australian tax system following the Henry Review. Quite the contrary, tax complexity is said to have further increased.<sup>2</sup> Turning to a more global perspective, this observation cannot only be made in Australia. There are several countries worldwide that raise concerns about their overly complex tax systems, such as China (Deloitte 2014), Germany (Spengel et al. 2012), the United Kingdom (Whiting et al. 2015) or the United States (Ingraham/Karlinsky 2005) – to mention only some of them.<sup>3</sup> This leads to the question regarding the position of Australia within a larger group of countries. In this article, I respond to this question by benchmarking the complexity of the Australian tax system against the average of a group of important peer countries, the remaining OECD countries. This perspective is an interesting viewpoint, as the OECD countries have committed themselves to certain minimum standards, such as a democratic political system and the support of free market economies, thus eliminating countries with extreme values from the reference group that might be considered as outliers. Furthermore, the OECD countries are all affected by OECD initiatives, such as the project on base erosion and project shifting (BEPS). Therefore, the perspective taken allows insights into Australia's position within a group of countries with a comparable tax and economic environment to be gained.

I use the data of the 2016 Global MNC Tax Complexity Survey<sup>4</sup> to review Australia's corporate income tax complexity and compare it to the average of the remaining OECD countries. A major advantage of using these data is that it not only comprises detailed information on corporate income tax complexity as faced by multinational corporations (MNCs) but also covers 100 countries worldwide. So far, there is no other uniform data set available that allows for an in-depth comparison of tax complexity across countries. I follow Hoppe et al. (2019) and define tax complexity as a characteristic of the tax system that arises from the difficulty of reading, understanding and complying with the tax code, as well as from various issues within the administrative and legislative processes and features (tax framework) of a tax system.<sup>5</sup> Analyzing their data in the Australian context represents a unique opportunity to enhance the knowledge on tax complexity in Australia. I find that the complexity of the Australian tax code is considerably higher than the OECD average. To a large extent, this difference is caused by anti-avoidance legislation, such as regulations on transfer pricing, general anti-avoidance or controlled foreign corporations (CFC). Excessive details and ambiguity and interpretation represent the main drivers of the complexity of these regulations. However, the complexity of Australia's tax framework is close to the OECD average. The same is true for the tax framework dimensions

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<sup>1</sup> See Commonwealth of Australia (2010). In total, the different review documents contain more than 1,000 pages.

<sup>2</sup> See Tran-Nam (2016), Tran-Nam et al. (2016).

<sup>3</sup> Tax complexity and tax simplification have also been addressed from an international perspective in several recent edited books that were dedicated to these topics. See, for example, Evans et al. (2015), James et al. (2016) and Evans et al. (2019).

<sup>4</sup> See Hoppe et al. (2017) for an overview of the survey.

<sup>5</sup> See Hoppe et al. (2019) for a discussion on the definition of tax complexity and different measurement approaches.

tax audits, tax guidance and tax filing and payment. In contrast, the tax law enactment process is considered significantly more complex in Australia, while the complexity of the tax appeals process<sup>6</sup> is significantly lower. An analysis of the underlying complexity drivers of the tax framework yields further interesting results. For example, the time between the announcement of a tax law change and its enactment is considered a serious issue in Australia. Meanwhile, Australia performs well with regard to potential problems in the anticipation of tax audits. For many of the other complexity drivers, those in Australia achieve similar evaluations to those in the remaining OECD countries. Although this does not necessarily mean that Australia's tax system is not complex in absolute terms, the latter finding indicates that Australia's tax system is often at least not excessively complex in comparison to its OECD peers.

My contribution to the literature on tax complexity in Australia is twofold. First, I provide an extensive review of corporate income tax complexity as faced by MNCs for Australia. The previous studies have often approached tax complexity through compliance costs, as tax complexity is well-known to increase the compliance burden (e.g., Tran-Nam/Glover 2002; Lignier/Evans 2012; Evans et al. 2013; Tran-Nam et al. 2014; Tran-Nam 2015; Wu/Tran-Nam 2017). As compliance costs only represent one possible approach for addressing tax complexity, many other studies using different approaches have also been performed. For example, the complexity of the tax code has been assessed by applying readability measures (e.g., Smith/Richardson 1999; Richardson/Smith 2002) or surveys have been implemented to measure the complexity of certain items of the tax system (e.g., Tran-Nam/Karlinsky 2009; Tran-Nam/Karlinsky 2010). The existing studies have, of course, analyzed different tax subjects and different types of taxes. However, to the best of my knowledge, a comprehensive review of the corporate income tax system from an MNC's perspective, which is the purpose of this study, still does not exist. This is surprising given that corporate income taxes are regularly subject to intense public debates and that MNCs represent an important group of companies due to the increasing globalization of business models.

Second, I contribute to the cross-country literature on tax complexity that has compared Australia with other countries by benchmarking Australia against the OECD average. Most previous studies focus on a comparison of Australia to a few selected countries. Among the most common countries Australia was compared to are New Zealand (e.g., Freudenberg et al. 2012; Budak/James 2016), the United Kingdom (e.g., James et al. 1981; Budak/James 2016) and the United States (McKerchar et al. 2005; Freudenberg et al. 2012). Due to the different research objectives of the studies, benchmarking their results against each other is generally difficult. Therefore, the main issue in this area of research is that uniform and, thus, comparable data are not available. For example, Freudenberg et al. (2012) and Budak and James (2016) have to acknowledge that the countries under investigation are not perfectly comparable since certain adjustments to the data had to be made. The data used in this study solve the noncomparability issue. Furthermore, the comparison with the remaining OECD countries allows for an evaluation of the Australian tax system in a broader context.

This article proceeds as follows. Section 2 provides an overview of the survey data used and describes the two samples on which the analysis is based. Section 3 contains the results. After

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<sup>6</sup> In this article, the term tax appeals is referred to in a broader sense, and covers the Australian terms objections, reviews and appeals.

briefly emphasizing the impact of tax complexity, deep insights into the tax code and the tax framework are provided. The last section concludes.

## 2. Methodology

### 2.1 Survey data

The data for this article were gathered through the Global MNC Tax Complexity Survey for the year 2016 by Hoppe et al., in which tax consultants of the 19 largest international tax services firms and networks<sup>7</sup> were surveyed about corporate income tax complexity as faced by MNCs.<sup>8</sup> The fully standardized survey contained 52 questions and was intended to collect comprehensive country-specific tax complexity data.<sup>9</sup> It finally yielded a total of 933 responses from 100 countries worldwide. These responses also form the basis for the Tax Complexity Index (TCI), which was developed by Hoppe et al. (2019). The TCI is based on the two-pillar concept of tax complexity, according to which tax complexity covers the complexity of the regulations of the tax code (tax code complexity subindex) and the complexity of the administrative and legislative processes and features within the tax framework (tax framework complexity subindex).<sup>10</sup> In contrast to many of the previous studies, this concept, therefore, considers tax complexity as a multidimensional construct that is closely in line with the ideas of Tran-Nam and Evans (2014) and Evans et al. (2017).

The complexity of the tax code was determined based on the following 15 dimensions (i.e., tax regulations): additional local and industry-specific income taxes, (alternative) minimum taxation, capital gains and losses, controlled foreign corporation, corporate reorganization, depreciation and amortization, dividends including withholding taxes, general anti-avoidance, group treatment, interest including withholding taxes and thin capitalization, investment incentives, loss offset, royalties including withholding taxes, statutory corporate income tax rate, and transfer pricing. Each of these regulations had to be evaluated with regard to five complexity drivers, namely, ambiguity and interpretation (i.e., unclear, imprecise and/or ambiguous phrasing so that different interpretations are possible), change (i.e., frequent and/or extensive changes), computation (i.e., many and/or sophisticated calculations), detail (i.e., excessive details, such as numerous rules or exception to rules) and record keeping (i.e., many records and documents).

The following five dimensions (i.e., processes and features) were used to determine the complexity of the tax framework: tax guidance (i.e., guidance provided by the tax authority or by any law to clarify uncertain tax treatments or procedures), tax law enactment (i.e., the process of how a tax regulation is enacted, starting with the discussion of a change in the tax law and ending with the regulation becoming effective), tax filing and payments (i.e., the process of preparing and filing tax returns as well as the payment and refund of taxes), tax audits (i.e., examination of tax returns by the tax authority and extent to which they can be anticipated and prepared) and tax appeals (i.e., the process from filing an appeal with the responsible institution to its resolution at the administrative or judicial appeal level). In contrast to the tax code, the

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<sup>7</sup> The firms and networks are Baker Tilly Roelfs, BDO, Crowe Kleeberg, Deloitte, DFK, Ecovis, HLB Stückmann, KPMG, Kreston, Moore Stephens, Nexia, PKF, PwC, RSM, Rödl & Partner, Taxand, UHY, Warth & Klein Grant Thornton and WTS.

<sup>8</sup> To avoid responses that are highly firm-specific, the survey was distributed to tax consultants and not to MNCs directly. As tax consultants are involved in various tax matters, they possess the capability to answer the questions from a broader perspective. The approach to ask tax consultants to take the perspective of certain taxpayers has also been applied widely in prior literature. See, e.g., Long/Swingen (1987), Davies et al. (2001), Ingraham/Karlinsky (2005), and Karlinsky/Burton (2011).

<sup>9</sup> The aggregated data can be downloaded at [www.taxcomplexity.org](http://www.taxcomplexity.org). This article, however, also makes use of more granular data, which are not publicly available.

<sup>10</sup> See Hoppe et al. (2018).

complexity of each dimension of the tax framework was evaluated based on complexity drivers that are specific to each dimension.<sup>11</sup>

The complexity drivers and dimensions were aggregated by Hoppe et al. (2019) to obtain the subindices. In principle, a value of zero represents the lowest possible level of tax complexity, whereas a value of one represents the highest possible level of tax complexity.

## 2.2 Sample

Out of the 933 survey respondents, 24 were from Australia and 448 were from the remaining OECD countries.<sup>12</sup> Even though these numbers are not very high in a statistical sense, they provide valuable information and a unique opportunity to benchmark Australia against its OECD peer countries.<sup>13</sup> Table 1 displays selected demographic characteristics of the respondents for Australia and the remaining OECD countries (i.e., the two subsamples used for this study) and already illustrates the high quality of the underlying data.

In both Australia and the remaining OECD countries, the majority of the respondents are partners, directors and principals (Australia, 79.17%; remaining OECD countries, 72.32%). Only a share of less than 10% is ranked below the manager level (Australia, 4.17%; remaining OECD countries, 8.25%). Furthermore, the respondents generally have substantial tax experience, with over 80% of the respondents having worked in the tax area for more than ten years (Australia, 87.5%; remaining OECD countries, 82.37%). Approximately 50% of both subsamples are familiar with at least one other tax system (Australia, 54.17%; remaining OECD countries, 47.77%), indicating a considerable amount of international knowledge and expertise. The distributions of the education levels differ to some extent. On average, the Australian respondents have a lower level of education, with a relatively high share of respondents owning a bachelor's degree as their highest degree (Australia, 41.67%; remaining OECD countries, 20.09%). However, as shown by Hoppe et al. (2019), the responses given within a country are not crucially affected by the respondents' demographic characteristics. The respondents' ages range across the whole spectrum, from under 30 to over 59 years. The majority of the respondents are between 40 and 49 years old (Australia, 33.33%; remaining OECD countries, 30.36%). In Australia, as well as in the remaining OECD countries, most of the respondents are male (Australia, 87.50%; remaining OECD countries, 76.79%). Overall, I conclude that the respondents are relatively similar with regard to their demographic characteristics and have extensive experience with taxes. I therefore expect the two subsamples to be suitable for the purpose of this study.

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<sup>11</sup> The number of complexity drivers varies between six (tax law enactment) and 14 (tax filing and payments). As most of the drivers will be addressed in the results section of this article, I do not introduce them in detail here.

<sup>12</sup> I refer to the 2016 OECD member countries. Hence, Lithuania is not considered an OECD member country. Furthermore, Iceland and Latvia are not included in the sample of Hoppe et al. (2019). Therefore, the remaining OECD countries subsample consists of 32 countries, namely, Austria (22 responses), Belgium (24 responses), Canada (17 responses), Chile (7 responses), Czech Republic (9 responses), Denmark (9 responses), Estonia (4 responses), Finland (10 responses), France (18 responses), Germany (25 responses), Greece (11 responses), Hungary (14 responses), Ireland (12 responses), Israel (4 responses), Italy (23 responses), Japan (13 responses), Korea (8 responses), Luxembourg (11 responses), Mexico (21 responses), the Netherlands (22 responses), New Zealand (9 responses), Norway (5 responses), Poland (18 responses), Portugal (9 responses), Slovak Republic (7 responses), Slovenia (5 responses), Spain (22 responses), Sweden (10 responses), Switzerland (14 responses), Turkey (7 responses), the United Kingdom (27 responses), and the United States (31 responses).

<sup>13</sup> Unfortunately, it is not possible to evaluate the statistical representativeness of the two subsamples, as countries usually do not provide detailed publicly available information, if any, on the registered tax consultants. For example, Australia has a public register ([www.data.gov.au/dataset/tpb-register](http://www.data.gov.au/dataset/tpb-register)) which, however, only contains business related information, such as the address, but no personal information, such as the age or the job position of the tax consultant.

Table 1: Demographic characteristics of the respondents

		Australia (24)		Remaining OECD countries (448)	
		Number	Percentage	Number	Percentage
<b>Job position</b>	Partner/Director/Principal	19	79.17%	324	72.32%
	Manager	4	16.67%	87	19.42%
	Senior assistant	1	4.17%	26	5.80%
	Junior assistant	0	0.00%	7	1.56%
	Other	0	0.00%	4	0.89%
<b>Tax experience</b>	>15 years	17	70.83%	283	63.17%
	>10 years but ≤15 years	4	16.67%	86	19.20%
	>5 years but ≤10 years	1	4.17%	53	11.83%
	≤5 years	2	8.33%	26	5.80%
<b>Familiar with ... other tax system(s)</b>	>three	4	16.67%	47	10.49%
	three	2	8.33%	24	5.36%
	two	3	12.50%	63	14.06%
	one	4	16.67%	80	17.86%
	no	11	45.83%	233	52.01%
	Missing	0	0.00%	1	0.22%
<b>Education</b>	Doctoral or equivalent	0	0.00%	55	12.28%
	Master or equivalent	14	58.33%	292	65.18%
	Bachelor or equivalent	10	41.67%	90	20.09%
	Secondary education	0	0.00%	4	0.89%
	Other	0	0.00%	7	1.56%
<b>Age</b>	Over 59 years	5	20.83%	42	9.38%
	50 – 59 years	3	12.50%	127	28.35%
	40 – 49 years	8	33.33%	136	30.36%
	30 – 39 years	6	25.00%	121	27.01%
	Under 30 years	2	8.33%	22	4.91%
<b>Gender</b>	Male	21	87.50%	344	76.79%
	Female	3	12.50%	100	22.32%
	Missing	0	0.00%	4	0.89%

### 3. Results

The subsequent results follow the structure of the Global MNC Tax Complexity Survey. They start with some general questions on tax complexity and then turn to a detailed analysis of Australia that also refers to the average of the remaining OECD countries as a benchmark covering both tax code complexity and tax framework complexity. The results refer to the year 2016, which is the year for which Hoppe et al. collected the data. The values provided represent the mean values of the individual responses.<sup>14</sup> For example, the values for Australia are calculated as the mean of the 24 Australian responses. To determine the differences between the two samples, Mann-Whitney U tests were performed. The asterisks (\*) denote significant differences at the 10% level.

<sup>14</sup> This approach needs to be applied to conduct meaningful statistical tests. It considers the 448 respondents from the 32 remaining OECD countries as one aggregate group implicitly giving more (less) weight to countries from which more (less) responses have been received. However, this is justified since some countries, such as the United States, indeed, more strongly shape the OECD than other countries. To analyze the implications of this assumption, I also aggregated the responses by country and compared the Australian mean value to the mean value of the remaining 32 OECD countries in untabulated analyses, thus applying a country-level equal weighting approach. The results obtained on a purely descriptive basis, i.e., without carrying out statistical tests, are qualitatively the same as when comparing the 24 Australian responses to the total of the 448 remaining OECD responses.



### 3.1 Impact of tax complexity

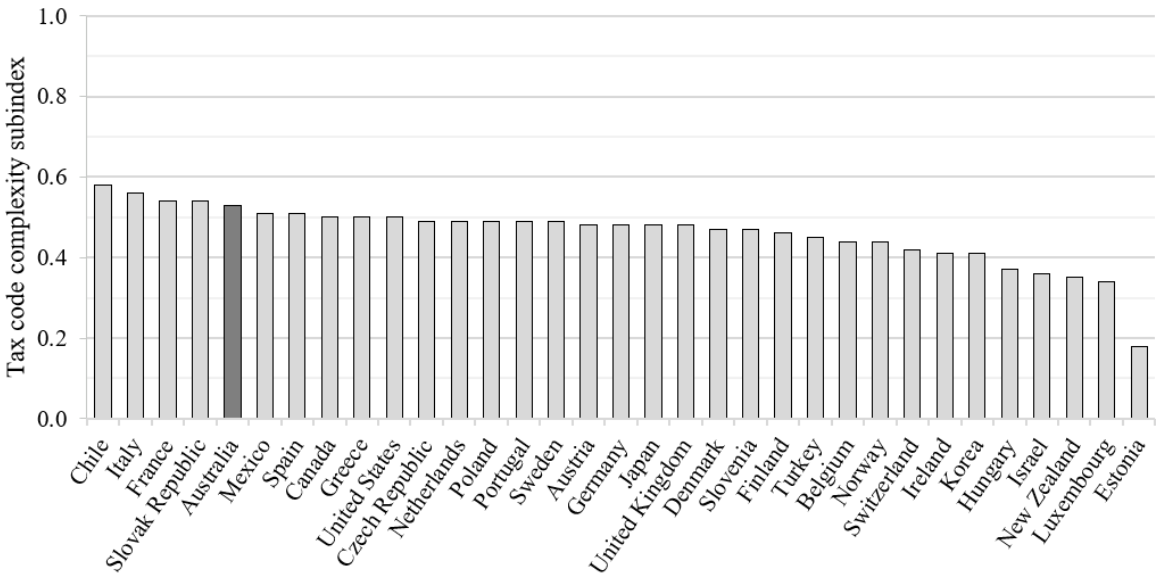
To become familiar with the topic of the survey, the respondents had to indicate their level of agreement with three statements on the impact of tax complexity in their country, ranging from zero (strongly disagree) to one (strongly agree). The first statement (“In my country, tax complexity has substantially increased for MNCs in the last five years”) was dedicated to the development of tax complexity in the past. The second statement (“In my country, tax complexity currently has only negative implications for MNCs”) focused on the role of tax complexity in the present. Finally, the third statement (“In my country, tax complexity will be one factor forcing MNCs to shift their business activities to other countries in the future”) aimed to capture the potential future implications of tax complexity.

It is striking that, for all the statements, the values are higher for the Australian respondents. For the first (Australia, 0.78; remaining OECD countries, 0.69) and the third statements (Australia, 0.60; remaining OECD countries, 0.49), the differences are also statistically significant. Hence, the Australian respondents have a considerably more uniform opinion about the increase of tax complexity in the past and are more concerned about the negative implications of tax complexity in the future. For the second statement (Australia, 0.57; remaining OECD countries, 0.52), the values are similar in both samples and relatively close to 0.50, which indicates neither agreement nor disagreement.

### 3.2 Tax code complexity

To provide an overall impression of the complexity of the Australian tax code, Figure 1 displays the tax code complexity subindex for Australia and the 32 remaining OECD countries. Within this sample, Chile has the most complex tax code (0.58), while Estonia has the least complex tax code (0.18). Australia ranks fifth and is, thus, clearly above average.

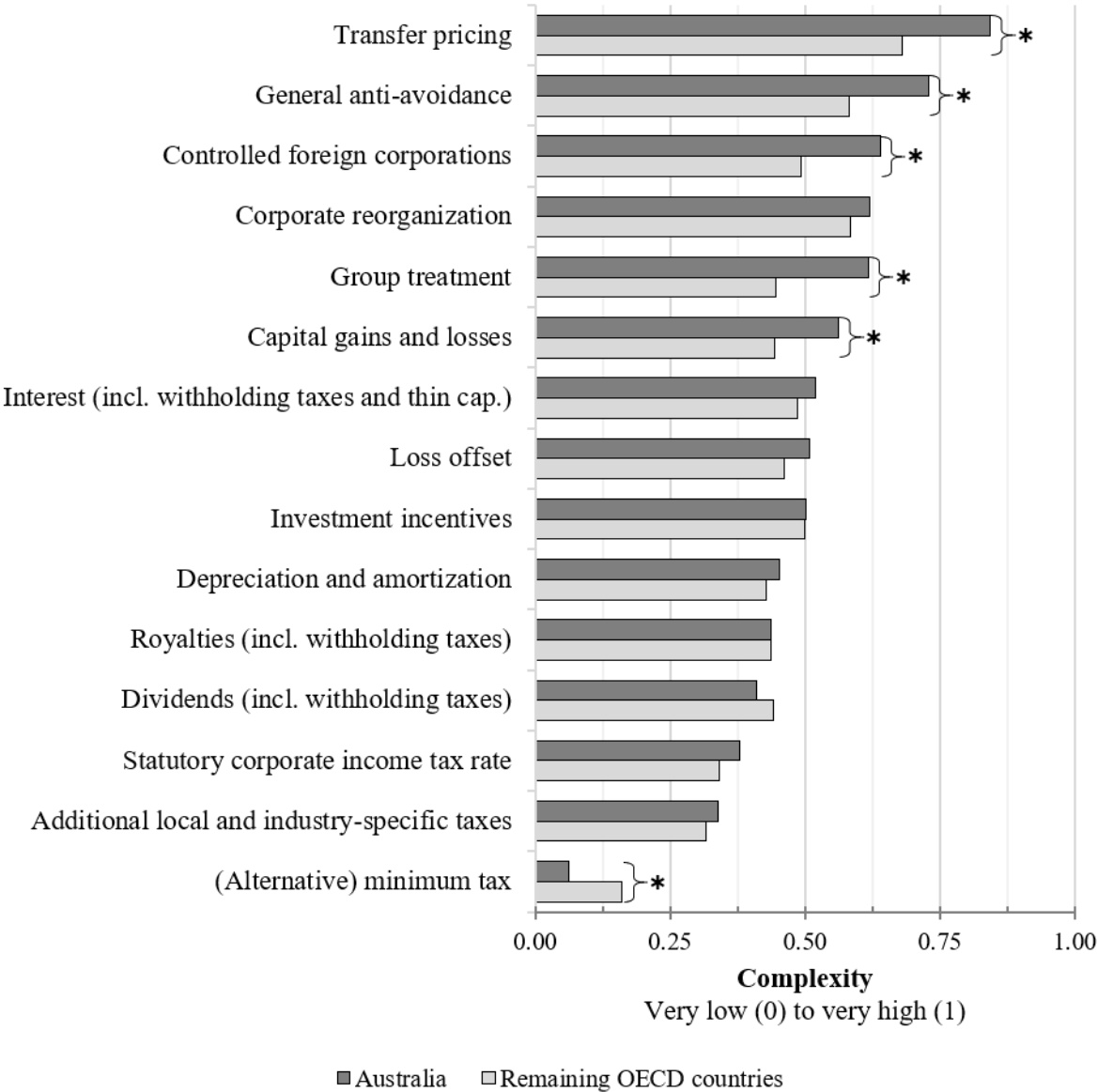
Figure 1: Tax code complexity levels



This illustrative evidence leads to the question of whether all regulations considered by the tax code complexity subindex similarly contribute to the relatively high overall level of tax code complexity in Australia, i.e., score above average, or whether specific regulations determine this result by being considerably more complex than the OECD average. Figure 2 provides the

answer to this question by decomposing the tax code complexity subindex into its single dimensions (i.e., regulations).

Figure 2: Complexity of tax regulations (descending order by Australian values)



Transfer pricing regulations are considered the most complex in both Australia and the group of the remaining OECD countries. They are followed by regulations on general anti-avoidance and controlled foreign corporations, which rank second and third in Australia, whereas in the remaining OECD countries, regulations on corporate reorganization and general anti-avoidance rank second and third. Regulations on (alternative) minimum tax are, by far, the least complex regulations. Overall, 13 out of 15 regulations are considered more complex in Australia than in the remaining OECD countries. However, only five of these regulations are more complex in a statistical sense, indicating that they are the main determinants of Australia’s higher overall tax code complexity. In contrast, the complexity of the remaining two regulations are considered less complex compared to the average of the remaining OECD countries, but only the regulation on (alternative) minimum tax has a statistically significant difference. This result can be easily explained by the fact that Australia does not impose a typical (alternative) minimum tax, for

which other countries, such as Korea or the United States, are well known.<sup>15</sup> In the following, the five regulations that are significantly more complex in Australia will be analyzed in more detail.

Transfer pricing issues have always been taken seriously in Australia, as the related party transactions represent a high share of Australia's cross-border trade flows.<sup>16</sup> This might also explain why the first regulations on transfer pricing were already enacted in 1982, which is much earlier than when the first OECD transfer pricing guidelines were issued (1995).<sup>17</sup> Currently, Australia largely follows the OECD guidelines and has codified the corresponding rules in Division 815 of the Income Tax Assessment Act 1997 (ITAA 1997).<sup>18</sup> At first glance, it is therefore surprising that Australia is considered much more complex than its OECD peers. However, this finding might be explained by the fact that 2016 was the year in which Australia introduced the new OECD reporting requirements, which consist of a local file, a master file and a country by country report (CbCR).<sup>19</sup> Compared to several other countries, Australia can be seen as an early adopter.<sup>20</sup> Although the accompanying guidelines were issued by the Australian Tax Office (ATO) in December 2015, the introduction of these new reporting requirements could have had a major impact. This is also reflected in the complexity drivers of transfer pricing, which all clearly exceed the values of the remaining OECD countries. The Australian respondents provide the highest ratings for details (0.86) and ambiguity and interpretation (0.86), which are closely followed by changes (0.84) and record keeping (0.84).

Similar to transfer pricing regulations, the Australian general anti-avoidance rules (GAAR) were introduced much earlier, i.e., in the year 1981.<sup>21</sup> They are codified in Part IVA of the Income Tax Assessment Act 1936 (ITAA 1936). As in other countries, their role is "to underpin the effectiveness of the primary operative provisions when those primary provisions fail to achieve their purpose"<sup>22</sup>. The four key issues that need to be considered with regard to Part IVA ITAA 1936 are as follows: (1) identifying the impermissible tax scheme, (2) determining the tax benefit obtained, (3) analyzing whether the scheme was entered for the purpose of obtaining a tax benefit, and (4) the actual cancellation of the tax benefit through the Commissioner.<sup>23</sup> In this context, frequent adjustments and uncertainty can be identified as the two main problems of the GAAR. Over time, several cases experienced a judicial review leading to decisions which, in turn, were pathbreaking for legislative adjustments.<sup>24</sup> This not only led to changes but also created uncertainty. However, uncertainty is not induced only by legislative adjustments but also by the GAAR themselves. For example, the definition of an impermissible tax scheme is formulated very widely in Australia so that the GAAR could, in theory, also apply to schemes that have commercial objectives.<sup>25</sup> While some uncertainty might be helpful to achieve the

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<sup>15</sup> In the United States, the corporate alternative minimum tax was repealed with the 2017 tax cuts and jobs act but was still in place when the survey was conducted in 2016. See Public Law 115-97 as of December 22, 2017.

<sup>16</sup> According to the Explanatory Memoranda of the Tax Laws Amendment (Cross-Border Transfer Pricing) Bill (No. 1) 2012 and the Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013, the share was already approximately 50% in 2009.

<sup>17</sup> See OECD (1995).

<sup>18</sup> See also OECD (2018) for an overview.

<sup>19</sup> See Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015.

<sup>20</sup> See [assets.kpmg/content/dam/kpmg/xx/pdf/2016/11/tnf-beps-action-13-november22-2016.pdf](https://assets.kpmg/content/dam/kpmg/xx/pdf/2016/11/tnf-beps-action-13-november22-2016.pdf) for an overview as of 2016.

<sup>21</sup> Of all the countries in the world, Australia is also said to have the longest experience with GAARs. See Pagone (2010).

<sup>22</sup> See Pagone (2003).

<sup>23</sup> See Barkoczy (2016) for a more detailed discussion.

<sup>24</sup> See PwC (2016) for a short overview of the historic changes in the Australian GAARs.

<sup>25</sup> See Kujinga (2016).

goals of the GAAR, it is also often stated that less uncertainty would be desirable.<sup>26</sup> The preceding remarks are also reflected in the complexity drivers of these regulations. Ambiguity and interpretation (Australia, 0.85; remaining OECD countries, 0.68) and change (Australia, 0.73; remaining OECD countries, 0.60) obtain significantly higher values in Australia than in the remaining OECD countries, further fostering the impression that Australia is overly complex with regard to GAARs.

CFC rules turn out to be the third most complex regulation in Australia. Like the regulations on transfer pricing and general anti-avoidance, they can be classified as anti-avoidance legislation, which highlights the relevance of this topic in Australia. The definition of a CFC is provided in Section 340 of the ITAA 1936. The CFC rules in Australia, in general, follow the basic structure of the CFC rules in the OECD countries.<sup>27</sup> The Australian survey respondents attribute a very high impact to the complexity driver detail (Australia, 0.80; remaining OECD countries, 0.54), which is also considerably higher than the rating for the remaining complexity drivers in Australia (computation, 0.69; ambiguity and interpretation, 0.65; record keeping, 0.64; change, 0.45). It is striking that, for the complexity driver change, Australia largely corresponds to the average of the remaining OECD countries of 0.47. However, overall, there seems to be no doubt that the Australian CFC rules are relatively complex,<sup>28</sup> and the concerns that these regulations are too detailed have existed for several years, with the survey results providing evidence that not much change has occurred regarding this aspect.<sup>29</sup>

Australia further provides regulations on consolidated groups (group treatment) that are significantly more complex than the average of the remaining OECD countries. In general, the Australian tax code allows a resident head company to form a group with eligible subsidiaries, which is then treated as one entity for tax purposes. Furthermore, resident subsidiaries that are wholly owned by a foreign parent company are allowed to enter a so-called multi-entry consolidated group. In their current version, the regulations cover approximately 460 pages in Part 3-90 ITAA 1997 (Division 700 to 721).<sup>30</sup> This is also reflected in the rating for the complexity driver detail, which is 0.72 in Australia and only 0.49 in the remaining OECD countries. However, the fact that many countries do not have such consolidation regimes in place might also contribute to these results.<sup>31</sup> The respondents in Australia also indicate that the complexity driver ambiguity and interpretation strongly contributes to the high complexity of their group treatment regulations (Australia, 0.67; remaining OECD countries, 0.43). Overall, besides offering considerable benefits to corporate taxpayers, the Australian consolidation regime is also well-known for causing problems, which also explains its high degree of complexity.<sup>32</sup> For

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<sup>26</sup> There is a wide discussion about certainty and uncertainty with regard to tax regulations in Australia. See, for example, Cooper/Russel (2013), Kujinga (2014) or Kujinga (2016).

<sup>27</sup> The basic structure contains the definition of a CFC, a test whether the foreign subsidiary should be taxed domestically and the determination of the taxable income. See Tax Foundation (2019).

<sup>28</sup> See Board of Taxation (2008) and Blackwood/Aboud (2017).

<sup>29</sup> See Greenleaf (2004) and Blackwood/Aboud (2017).

<sup>30</sup> Born (2016) also highlights that the high number of pages of the consolidation regime causes complexity. The number of pages is not only large in absolute but also in relative terms. The ITAA 1997 contains approximately 5,300 pages in total. Hence, approximately 8.7% of the tax code is dedicated to consolidated groups. In contrast, only approximately 30 pages are dedicated to transfer pricing issues in Division 815 ITAA 1997.

<sup>31</sup> See, for example, Solilova/Nerudova (2018) for an overview of the EU countries as of 2016.

<sup>32</sup> The high degree of complexity of these rules in Australia is also outlined in the post implementation review of the Board of Taxation. See Board of Taxation (2012).

example, the consolidation is sometimes called a “road of no return”,<sup>33</sup> as the decision to consolidate is irrevocable. Furthermore, there have been several issues with inconsistencies between ordinary consolidated groups and multi-entry consolidated groups.<sup>34</sup>

The last regulations that are significantly more complex in Australia are those on capital gains and losses (capital gains taxation, CGT), which originate from the United Kingdom’s CGT.<sup>35</sup> The regulations are codified in Part 3-1 and Part 3-3 ITAA 1997. Similar to the regulations on consolidated groups, these two parts of the tax code span more than 400 pages of legislation, thus giving rise to the question of whether the complexity driver detail, again, appears to be the most serious one. In fact, detail largely contributes to the complexity of CGT regulations (detail 0.70; record keeping 0.59; ambiguity and interpretation 0.55; computation 0.55; change 0.43).<sup>36</sup> Furthermore, the difference from the average value of detail of the remaining OECD countries (0.48) is highly significant. When considering the Australian CGT in more detail, this finding appears plausible. There are more than 50 different types of CGT events, numerous exemptions, cross-references to other parts of the tax code and special rules for specific circumstances.<sup>37</sup> The only complexity driver that is not significantly different from the average of the remaining OECD countries is, like for CFC rules, change. This indicates that, in Australia, the CGT is not characterized by an overly intensive reform dynamic.

Overall, the analysis of the tax code provides evidence that especially certain elements of anti-avoidance legislation are considered very complex in Australia. Excessive details have a crucial impact on the complexity of the five regulations that are considered more complex in Australia than in the remaining OECD countries. Another important complexity driver appears to be ambiguity and interpretation. In contrast, change has relatively little impact in explaining the differences and, for CFC rules and CGT, is not even significantly different from the averages of the remaining OECD countries.<sup>38</sup>

### 3.3 Tax framework complexity

Turning to tax framework complexity, Figure 3 displays the values of the tax framework complexity subindex for each sample country to obtain a first impression of Australia’s rank within the remaining OECD countries. It can be immediately observed that Australia performs better, i.e., is less complex, in the framework than in the tax code (Figure 1). Out of the 33 sample OECD countries, it ranks 14th, representing an improvement of nine ranks compared to tax code complexity. However, it still belongs to the upper half of countries for tax framework complexity. With regard to the remaining countries, the Czech Republic is considered the most complex country, while the Dutch tax framework is the least complex one. The comparison between the tax code and the tax framework subindex further indicates that countries with a complex (simple) tax code do not necessarily have a complex (simple) tax framework. For example, Estonia has the least complex tax code, while its tax framework is more complex than the tax framework in Australia.

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<sup>33</sup> See Ting (2010).

<sup>34</sup> For more details, see Working Group of the Australian Government (2014).

<sup>35</sup> See Barkoczy (2016).

<sup>36</sup> Interestingly, qualitatively, the same observation can be made for the United Kingdom.

<sup>37</sup> See Barkoczy (2016).

<sup>38</sup> This result is surprising to some extent given that prior studies, such as Tran-Nam/Karlinsky (2009) and Freudenberg et al. (2012), have considered change as a very important, if not the most important, complexity driver in Australia. In contrast, the study of McKerchar et al. (2005) provides evidence that details are most important, followed by ambiguity and changes. However, all of these studies have in common that they do not focus on MNCs.

Figure 3: Tax framework complexity

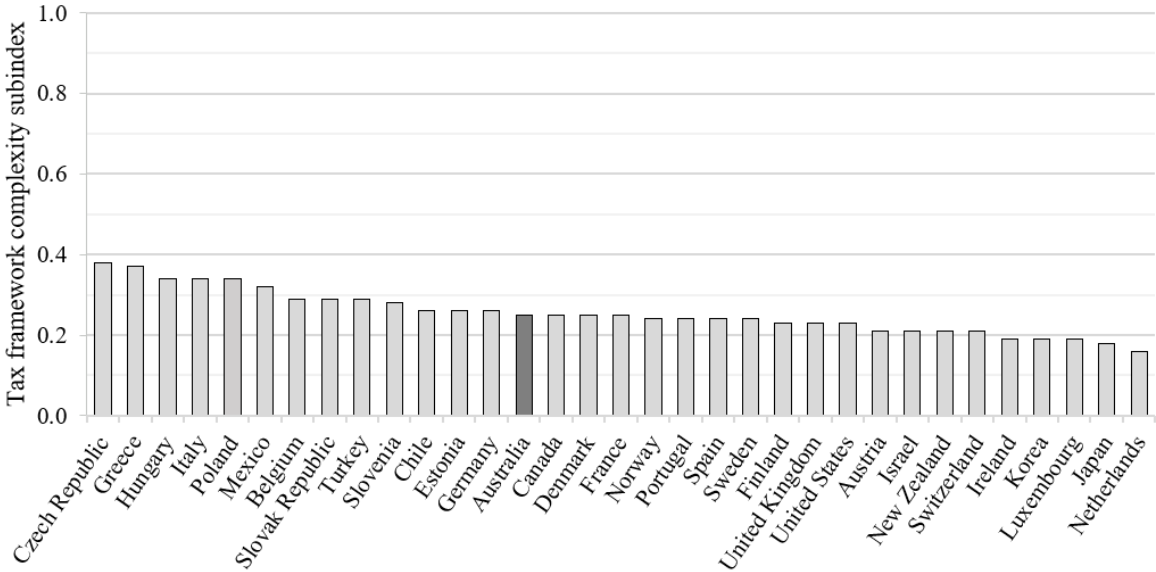
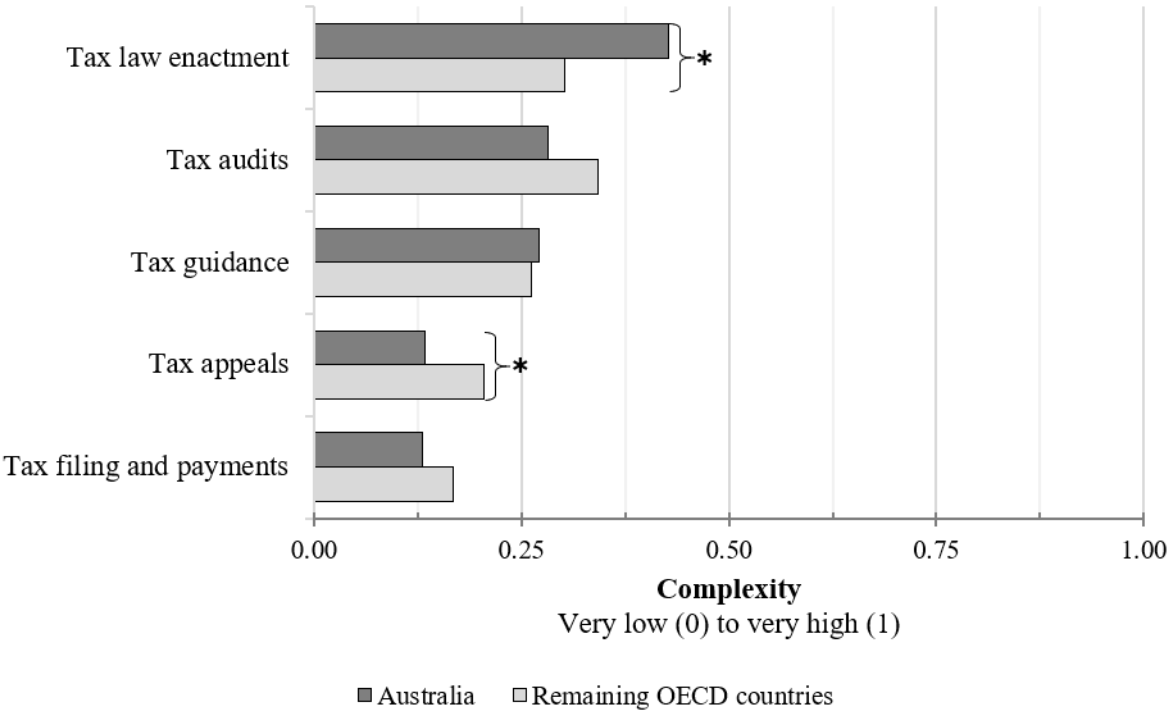


Figure 4 decomposes the tax framework complexity subindex into its single dimensions (i.e., processes and features).

Figure 4: Complexity of the tax framework dimensions (descending order by Australian values)



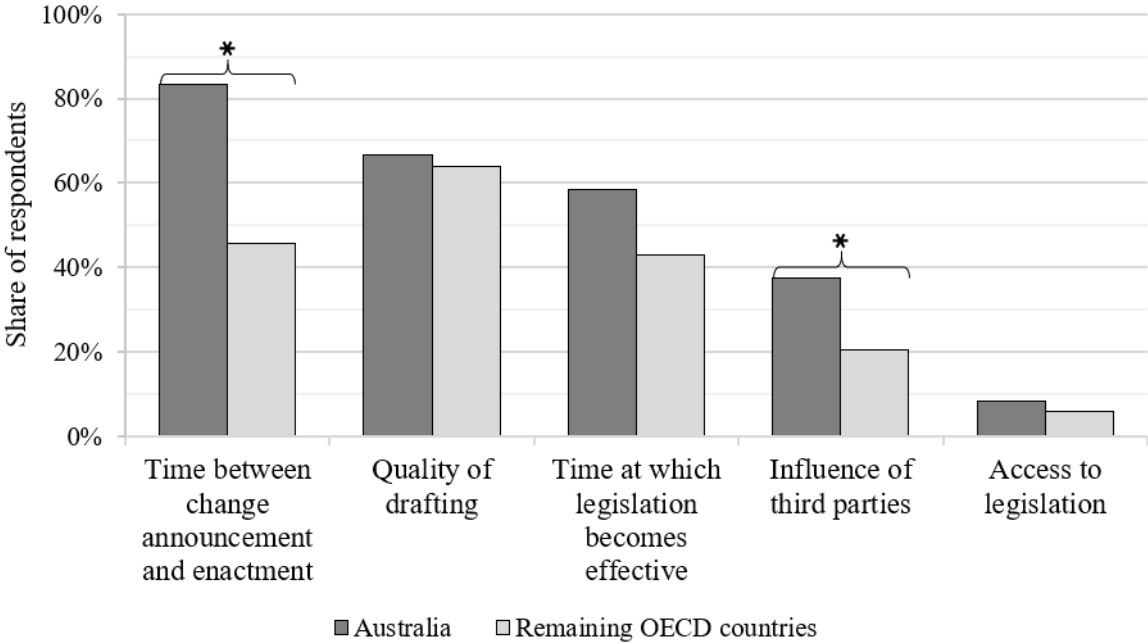
The tax law enactment process is considered the most complex and ranks first in Australia, whereas in the remaining OECD countries, the tax audit process ranks first. However, while tax audits are also classified as highly complex in Australia, the same is true for tax law enactment in the remaining OECD countries, indicated by rank two in both samples. Moreover, in both Australia and the remaining OECD countries, the tax filing and payments process is least complex. Overall, three Australian processes and features (tax audits, tax appeals, and tax filing and payments) are considered less complex than in the remaining OECD countries, while the two

other processes (tax law enactment and tax guidance) are more complex in Australia. The differences are statistically significant for tax law enactment and tax appeals. Due to the rather low number of dimensions in comparison to the tax code, I will not investigate only these two processes but, rather, will analyze all five processes and features in more depth in the following. However, within the specific dimensions, I will mainly focus on the complexity drivers that differ significantly between Australia and the remaining OECD countries.

### 3.3.1 Tax law enactment

For the purpose of the survey, the enactment process was defined as the process of how a tax regulation is enacted, starting with the discussion of a change in the tax law and ending with the regulation becoming effective.<sup>39</sup> Similar to all other OECD countries, the enactment process is anchored in the Australian constitution.<sup>40</sup> It contains several stages involving a wide range of different parties.<sup>41</sup> In general, the enactment process of a tax law corresponds to the enactment process of any other law.<sup>42</sup> Figure 5 provides a more detailed illustration of this issue and displays the selected complexity drivers within the tax law enactment process to provide an explanation for the higher overall complexity of this dimension. The ordinate shows the share of respondents that selected the respective complexity driver as a regular problem.

Figure 5: Problems in the tax law enactment process (descending order by Australian values)



Across all five complexity drivers, Australia obtains higher values than its OECD peers. The differences are considerably large for the time between the announcement of a change and its enactment and the influence of third parties. Almost twice as many respondents in Australia have the opinion that these complexity drivers regularly cause problems. The time between the announcement of a change and its enactment can be problematic in two ways.<sup>43</sup> On the one

<sup>39</sup> See Hoppe et al. (2019).  
<sup>40</sup> See Australian Constitution Part V.  
<sup>41</sup> The Australian Government provides a detailed handbook on legislation, see Commonwealth of Australia (2017).  
<sup>42</sup> There are only minor differences. For example, a tax bill might be presented to the House of Representatives without former notice, see Standing Order 178.  
<sup>43</sup> See also Barkoczy (2016) for some anecdotal evidence.

hand, the time period might be too long, thus leading to uncertainty for taxpayers about the future implementation of a specific tax issue. On the other hand, the time period might be too short, thus resulting in ad hoc implementations that are not carried out with the necessary diligence. To some extent, there is evidence for both directions in Australia. For example, Krever (2003) highlights that the legislative bodies contribute to tax complexity by providing ad hoc and piecemeal responses to judicial decisions instead of more structured solutions, which indicates that the enactment process might be carried out too quickly.<sup>44</sup> In contrast, the introduction of the revised research and development incentives represent an example of a process that started in September 2010 and took the relatively long time of nearly 12 months.<sup>45</sup> Irrespective of whether one of these two directions is the dominant one, the respondents largely agree that such issues represent a serious problem.

The influence of third parties can cause problems through strong lobbying or corruption. However, the opposite might also be true, i.e., third parties might not be sufficiently involved in the enactment process. The situation in Australia provides evidence for the latter view. In 2008, the Australian Government set up a Tax Design Review Panel, which suggested that the government should consult with private sector experts for future tax reforms.<sup>46</sup> However, in an evaluation two years later, it was highlighted that only in seven out of 90 tax measures were private sector experts involved.<sup>47</sup> The results of the present survey indicate that a sufficient degree of involvement might still not have been reached.

The remaining complexity drivers (quality of drafting, time at which legislation becomes effective, and access to legislation) yield no significant differences. The quality of drafting is a considerable problem in Australia and in the remaining OECD countries.<sup>48</sup> The access to legislation does not seem to be a serious issue, either in Australia or in its OECD peers which might be attributed to the overall good online availability of the tax codes.<sup>49</sup> In contrast, the complexity driver time at which legislation becomes effective clearly causes more problems. It seems to be more serious in Australia than in the remaining OECD countries. However, the difference is not significant in a statistical sense. In general, problems in this area are commonly driven by the retrospective applications of tax laws.<sup>50</sup>

### 3.3.2 Tax filing and payments

The tax filing and payments dimension summarizes two important processes of the corporate income tax system, i.e., the declaration and the payment of taxes. Australia applies the concept of full self-assessment<sup>51</sup> for companies, i.e., companies are required to calculate their income

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<sup>44</sup> The high speed in which new legislation is introduced is also evident in more recent specific examples. For example, the Treasury Laws Amendment (Combating Multinational Tax Avoidance) Bill 2017 was introduced and read for the first time on February 9, 2017 and obtained assent on April 04, 2017 (see [www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r5805](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5805)). Among other changes, this bill introduced a completely new tax, the diverted profits tax. Other reforms, such as the Treasury Laws Amendment (Lower Taxes for Small and Medium Businesses) Bill 2018, have even rushed through the whole process within less than two weeks.

<sup>45</sup> These incentives were introduced by the Tax Laws Amendment (Research and Development) Bill 2011. For the enactment process, see [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r4438](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r4438). Due to the long time period of the enactment process, the applicability of the new regulations was shifted by one year.

<sup>46</sup> See Tax Design Review Panel (2008).

<sup>47</sup> See Board of Taxation (2011).

<sup>48</sup> See IMF/OECD (2017).

<sup>49</sup> For Australia, see [www.legislation.gov.au](http://www.legislation.gov.au).

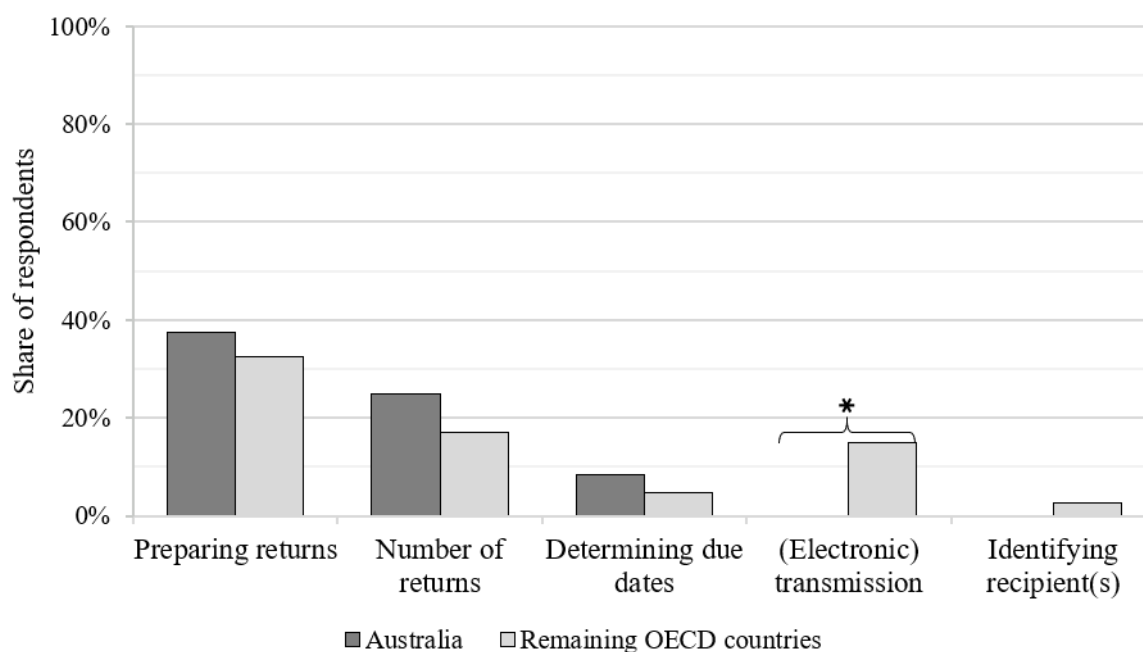
<sup>50</sup> For Australia, see The Australian Law Reform Commission (2015). Two well-known examples are the retrospectivity issues discussed in the context of transfer pricing (Kraal/Lugo 2013) and consolidated groups (Ting 2013).

<sup>51</sup> See Section 6 ITAA 1936.



tax liability and pay taxes when they lodge their returns.<sup>52</sup> Unlike for individuals, there is no formal assessment by the Commissioner. According to Figure 4, this dimension is the least complex one in both Australia and the remaining OECD countries. Figure 6 and Figure 7 provide some deeper insights into the complexity drivers of these processes, starting with the filing process.

Figure 6: Problems in the filing process (descending order by Australian values)



The central tax form for companies in Australia is Form C (company tax return), which is currently 12 pages long and has to be filed annually.<sup>53</sup> Depending on the taxpayer’s circumstances, additional forms, e.g., on capital gains tax, might be necessary. The tax returns can be lodged either by paper or via business reporting enabled software.<sup>54</sup> Comprehensive instructions, e.g., on the record-keeping requirements, are provided online by the ATO.<sup>55</sup> Furthermore, Australia is a country in which taxpayers heavily rely on tax practitioners for filing purposes.<sup>56</sup>

The survey respondents highlight that the identification of the tax return recipient(s) and the (electronic) submission of tax returns are not problems in Australia. The latter finding is also significantly different from the remaining OECD countries, thus indicating that the Australian system performs very well compared to the OECD average. The other three complexity drivers (preparing returns, number of returns, and determining due dates) are each considered slightly more complex in Australia. With regard to the preparation of tax returns, Tran-Nam et al. (2016) outline that a large share of the working time of tax practitioners is dedicated to the preparation and lodging of tax returns, providing evidence for the finding that this complexity driver is the most serious one in Australia in the filing process. As the tax return only has to be filed annually, the Australian responses on the problems with the number of tax returns might be more related

<sup>52</sup> See Barkoczy (2016). The content of returns of full self-assessment taxpayers is codified in Section 161AA ITAA 1936.

<sup>53</sup> See Section 161 ITAA 1936.

<sup>54</sup> See [www.business.gov.au/Finance/Taxation/How-to-lodge-and-pay-for-tax](http://www.business.gov.au/Finance/Taxation/How-to-lodge-and-pay-for-tax).

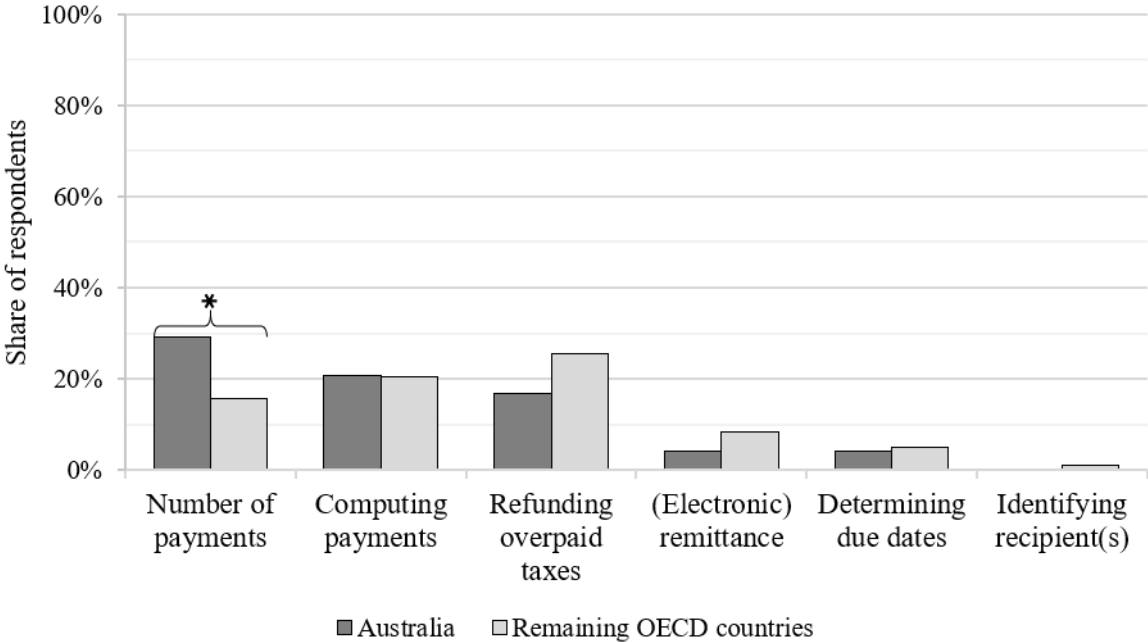
<sup>55</sup> See [www.ato.gov.au/Forms/Company-tax-return-instructions-2019/](http://www.ato.gov.au/Forms/Company-tax-return-instructions-2019/).

<sup>56</sup> See Tran-Nam et al. (2016).

to the existence of the different tax returns that have to be considered depending on the circumstances of the taxpayer. This might also be true for other countries.

The selected complexity drivers of the payment process are displayed in Figure 7. Similar to the filing process, there are three complexity drivers that appear to be of minor relevance both in Australia and the remaining OECD countries, i.e., the (electronic) remittance of tax payments, the determination of due dates and the identification of the recipient(s). The number of tax payments is considered a significantly more serious issue in Australia than in the remaining OECD countries. In Australia, companies are subject to so called pay as you go (PAYG) instalments, which represent prepayments for the expected corporate tax burden.<sup>57</sup> As the standard case, these PAYG instalments are payable for each quarter of the income year.<sup>58</sup> If a company meets a certain income threshold, it is subject to monthly instead of quarterly payments.<sup>59</sup> This might serve as an explanation for the finding observed, as earlier tax payments negatively affect the companies' free cash-flow, thus inducing potential liquidity constraints. The computation of tax payments in Australia does not appear to be more problematic than in the remaining OECD countries. The same is true for refunds of overpaid taxes, although Australia is slightly less problematic with regard to this complexity driver.<sup>60</sup>

Figure 7: Problems in the payment process (descending order by Australian values)



### 3.3.3 Tax guidance

Tax guidance is the dimension of the tax framework for which the value of Australia (0.27) is very close to the value of the remaining OECD countries (0.26). For most of the complexity drivers, large differences are not found. For example, as indicated by the survey respondents, Australia offers a broad range of guidance, such as public rulings (TR 2006/10), private rulings

<sup>57</sup> See Part 2-10 TAA 1953 for further details.  
<sup>58</sup> See Division 45-1 TAA 1953. The concept of quarterly payments also applies to other countries, such as Germany.  
<sup>59</sup> See Section 45-138 TAA 1953. This threshold has decreased over time so that more companies are affected by this rule (see Barkoczy 2016).  
<sup>60</sup> In general, the ATO has committed itself to fast tax refunds. For example, for personal income taxpayers, it highlights a duration of approximately two weeks for obtaining a tax refund. See <https://www.ato.gov.au/Individuals/Lodging-your-tax-return/Lodge-a-paper-tax-return/>. For the differences between e-filing and paper-based filing, see also Warren (2016).

(TR 2006/11) or government publications, which give certainty and advice to taxpayers – as do many other OECD countries.<sup>61</sup> Similar to the tax code, Australia provides many guidance documents online so that they are easily accessible to the public.<sup>62</sup>

In addition to these documents, international soft law or other domestic laws, such as accounting principles, might be helpful to clarify the treatment of tax issues and to decrease the complexity when specific tax regulations do not exist. With regard to soft law, the OECD guidelines can be mentioned as one prominent example.<sup>63</sup> In the survey, the respondents had to answer a question on the extent to which international soft law offers support in dealing with their domestic tax law on a scale from zero (very great extent) to one (no extent). The value obtained for Australia (0.48) is slightly higher than the average value of the remaining OECD countries (0.46), but the values are not significantly different. This indicates that soft law is helpful to some extent in both samples. A final question was dedicated to the relationship between the domestic accounting principles and the tax law. The respondents were asked to assess the extent of the differences between both concepts on a scale from zero (no extent) to one (very great extent). For this question, the difference between Australia (0.71) and the remaining OECD countries (0.53) is statistically significant. A brief look at Australian history is helpful to explain this finding. In the distant past, there was no relationship between tax accounting and financial accounting in Australia.<sup>64</sup> Over the years, the Board of Taxation highlighted the progress in aligning these concepts and called for an even stronger alignment where reasonable.<sup>65</sup> The survey results, however, indicate that the differences are still quite large compared to the remaining OECD countries.

### 3.3.4 Tax audits

Tax audits represent an important measure in the enforcement of tax compliance. They have gained even more importance in the light of the debate on BEPS and are also of special interest to the research community.<sup>66</sup> In Australia, the Commissioner's main audit powers are codified in Sections 353-10 (notice powers) and 353-15 (access powers) of the Taxation Administration Act 1953 (TAA 1953). In general, Australia follows a risk-based audit approach.<sup>67</sup> Special attention is devoted to certain types of taxpayers, such as large companies, due to the complex nature of their transactions and the revenue effects of potential noncompliance.<sup>68</sup> Furthermore, Australia is one of those countries that heavily relies on a cooperative compliance approach, which is intended to establish a transparent partnership between the taxpayers and the tax authority.<sup>69</sup> The complexity drivers of the tax audit processes can be broadly categorized into problems in the anticipation of the audit process (Figure 8) and problems in the audit process itself (Figure 9). Similar to the previous dimensions of the tax framework, the respondents had

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<sup>61</sup> See also Barcoczy (2016).

<sup>62</sup> For example, for public rulings, see <https://www.ato.gov.au/Law/#Law/table-of-contents?category=E>. In their survey of personal taxpayers, Tran-Nam et al. (2014) find evidence that the ATO publications are considered useful in general.

<sup>63</sup> See, for example, OECD (2017) for guidelines on transfer pricing.

<sup>64</sup> See Porcano/Tran (1998).

<sup>65</sup> See Board of Taxation (2018). There is also some evidence that certain developments, such as the IFRS adoption, have not been very helpful in achieving this goal. See Tran/Zhu (2017). De Zilva (2003) provides a more general discussion on whether the alignment of tax and financial accounting is feasible in Australia.

<sup>66</sup> See, for example, Bagaric et al. (2011), Beck/Lisowsky (2014), Brushwood et al. (2018), Ayers et al. (2019) or de Castro et al. (2019).

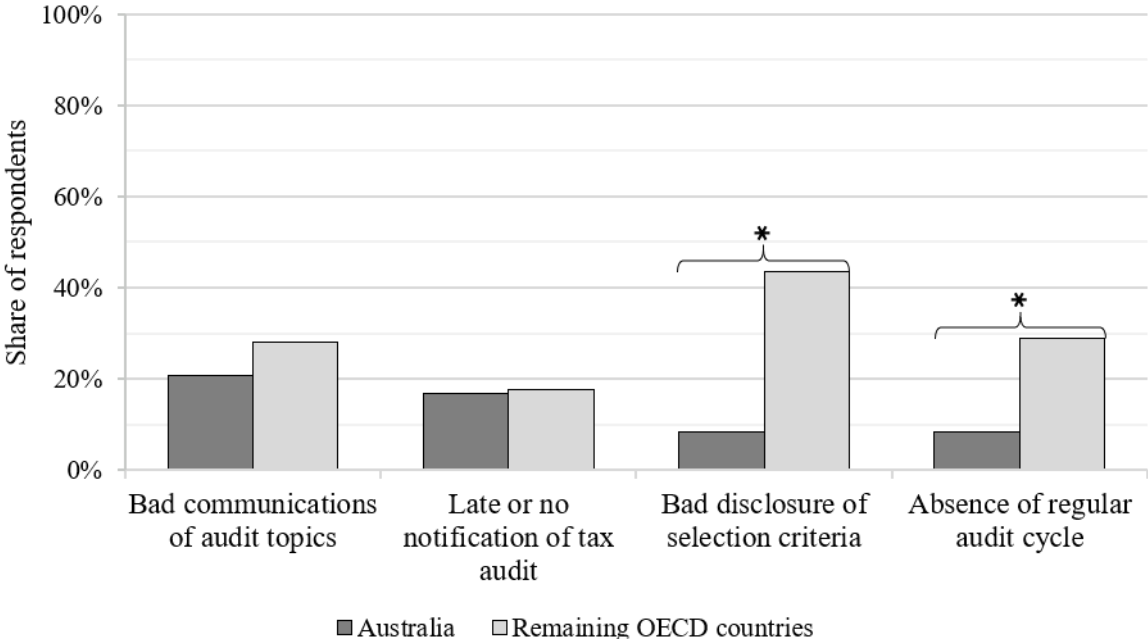
<sup>67</sup> The most widespread audit selection criteria worldwide are individual screening, random selection and risk-based selection. See Vellutini (2011).

<sup>68</sup> See Barcoczy (2016).

<sup>69</sup> See OECD (2019) for an overview and OECD (2016) for the relevance of this topic on the OECD level. The Australian approach is described in more detail in Australian Taxation Office (2000).

to indicate whether they consider the respective complexity driver to be a serious problem for MNCs in their country.

Figure 8: Problems in the anticipation of tax audits (descending order by Australian values)

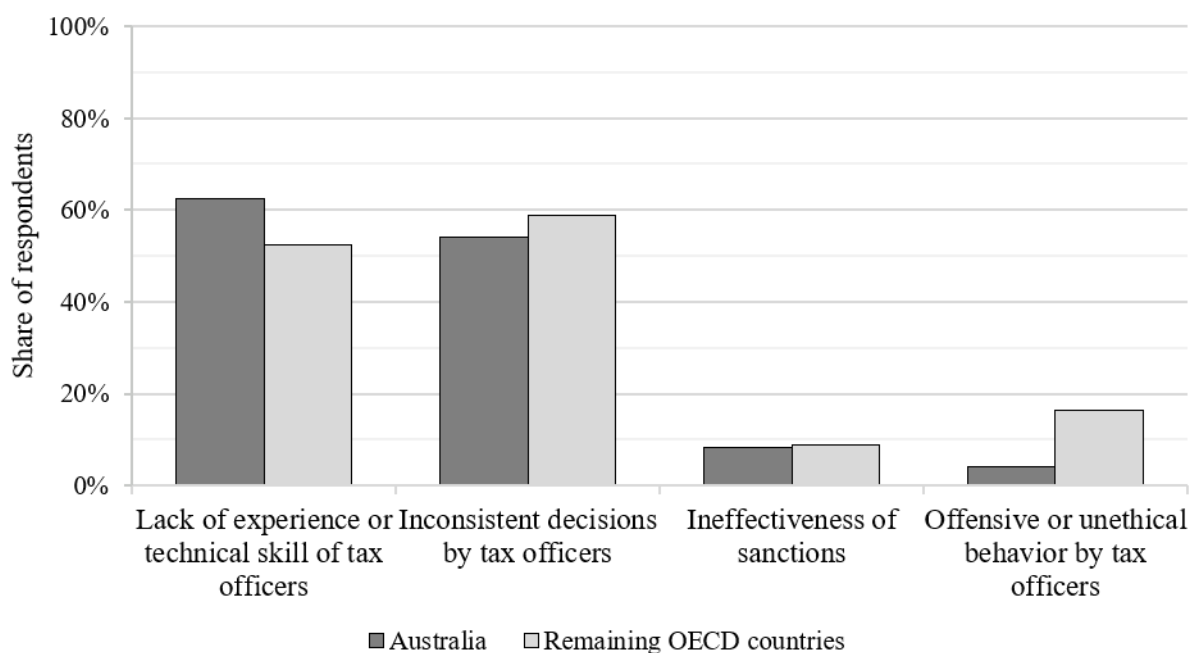


With regard to the anticipation of tax audits, Australia obtains lower values than the remaining OECD countries. For the complexity drivers bad disclosure of selection criteria and absence of a regular audit cycle, the differences are also statistically significant. These large differences might be explained by the audit approach taken by the ATO. Overall, it might be relatively easy for MNCs to anticipate that they will be audited, as they are the target group of this approach. The cooperative compliance regime might further be helpful in identifying critical issues upfront, which would increase the likelihood of an audit. Especially key or high-risk taxpayers are continuously monitored or reviewed, which might serve as an explanation for the finding that the absence of a regular audit cycle is not considered a serious problem in Australia.<sup>70</sup>

The remaining two complexity drivers (bad communication of audit topics and late or no notification of a tax audit) are not significantly different from the remaining OECD countries. In general, the share of Australian respondents who classify these issues as serious problems is low (approximately 20%). According to the scheme of the typical audit process, the ATO is relatively transparent regarding these complexity drivers.<sup>71</sup> For example, the taxpayers are informed about the audit and the audit topics upfront. However, the audit scope can, of course, be broadened during the audit process based on the insights gained. As the main focus of tax audits, the Australian survey respondents highlight transfer pricing, corporate reorganization and general anti-avoidance issues.<sup>72</sup>

<sup>70</sup> For more detailed information on the ATO’s risk assessment tools, see Inspector-General of Taxation (2013).  
<sup>71</sup> See [www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Tailored-engagement/Audits/#Typicalaudit-process](http://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Tailored-engagement/Audits/#Typicalaudit-process).  
<sup>72</sup> The top three regulations in the remaining OECD countries are also, in a slightly different order, transfer pricing, general anti-avoidance and corporate reorganization.

Figure 9: Problems in the tax audit process (descending order by Australian values)



For the audit process itself, it needs to be emphasized that no significant differences between Australia and the remaining OECD countries can be observed. Furthermore, the complexity drivers ineffectiveness of sanctions and offensive or unethical behavior by tax officers are not perceived as serious problems, either in Australia or in the remaining OECD countries. In contrast, the complexity drivers lack of experience or technical skill of tax officers and inconsistent decisions by tax officers seem to cause many more problems in Australia and the remaining OECD countries. In explaining these high values for Australia, some reviews of the Inspector-General of Taxation (IGT) provide supportive evidence. For example, Inspector-General of Taxation (2012) highlights that several taxpayers had negative experiences with some ATO auditors, as they appeared to be inexperienced. In its response, the ATO agreed upon this issue.<sup>73</sup>

### 3.3.5 Tax appeals

If a taxpayer is dissatisfied with the outcome of a tax audit, there are usually several channels to challenge the tax assessment. Most countries differentiate between administrative and judicial options. In general, the Australian system corresponds to this classification and offers the following three channels: objections, reviews and appeals.<sup>74</sup> The first instance usually is to object against the assessment of the Commissioner. If still not satisfied with the outcome, the taxpayer can either request a review at the Administrative Appeals Tribunal (AAT) or appeal against the objection decision to the Federal Court.<sup>75</sup> Appeals can still be made from the AAT to the Federal Court on questions of law but not on questions of fact.<sup>76</sup> In principle, it is also possible to appeal against the decision of the Federal Court to the Full Federal Court and the

<sup>73</sup> See Inspector-General of Taxation (2012).

<sup>74</sup> See Part IVC TAA 1953.

<sup>75</sup> See Section 14ZZ TAA 1953.

<sup>76</sup> See Section 44 Administrative Appeals Tribunal Act 1975

High Court.<sup>77</sup> The following figures provide insights into selected complexity drivers at the administrative (Figure 10) and judicial levels (Figure 11).

Figure 10: Problems at the administrative level (descending order by Australian values)

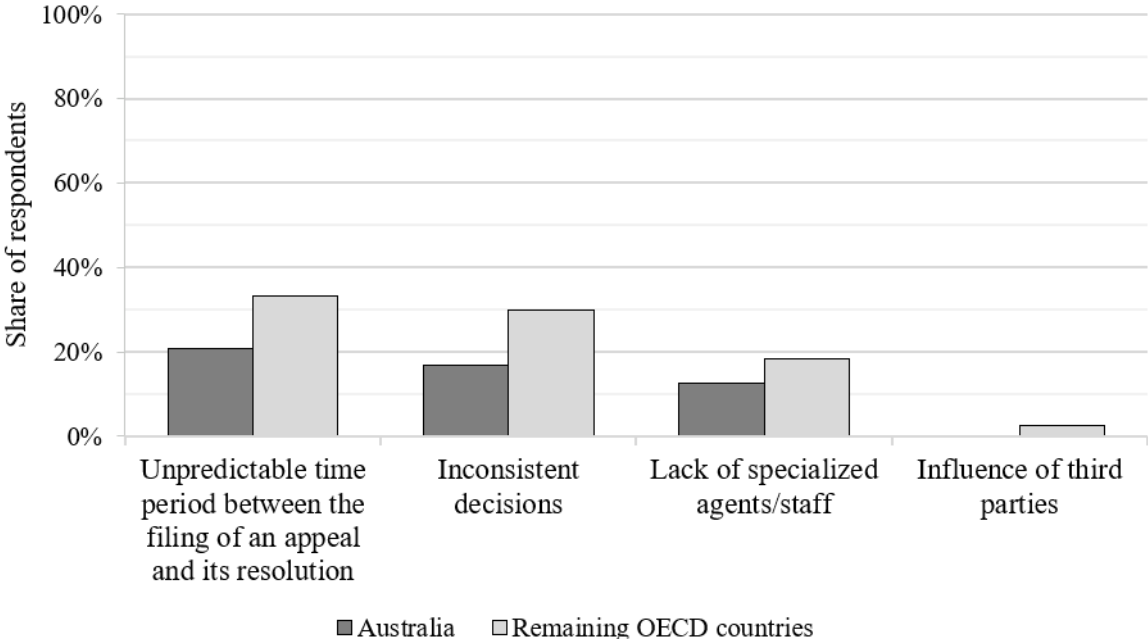
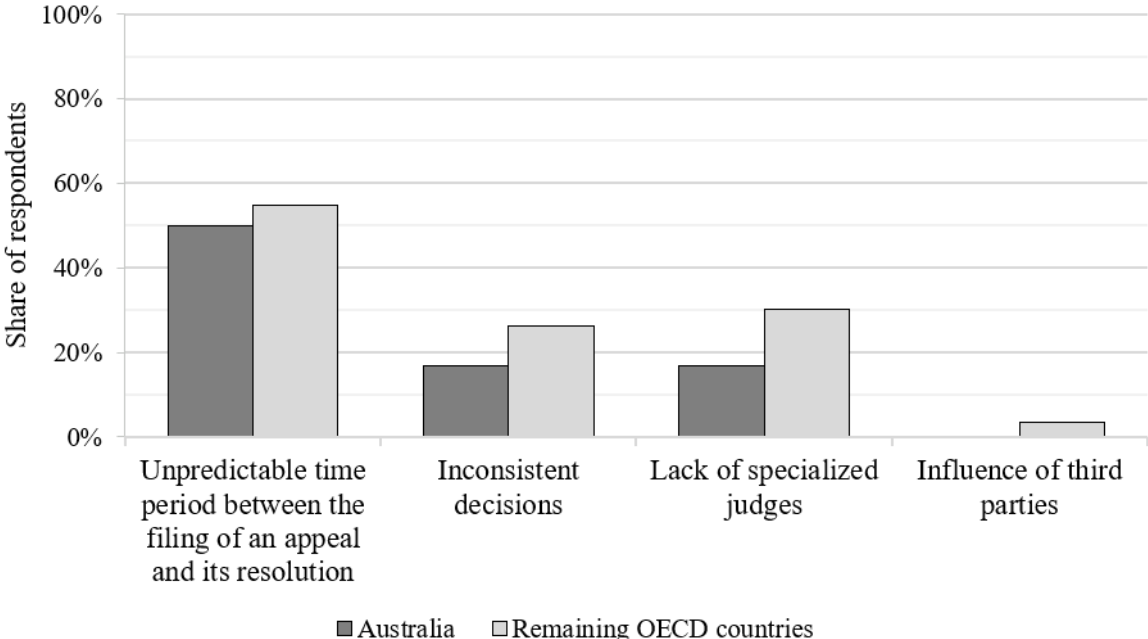


Figure 11: Problems at the judicial level (descending order by Australian values)



Three aspects are striking. First, no significant differences between Australia and the remaining OECD countries can be observed. Second, although not statistically significantly different, the share of Australian respondents selecting a problem is below that of the remaining OECD countries for all the complexity drivers, which provides an explanation for the overall significant difference for tax appeals according to Figure 4. Third, the responses given in Australia follow

<sup>77</sup> See Sections 24, 25 and 33 Federal Court of Australia Act 1976.

the same pattern at both levels, with the unpredictable time period between the filing of an appeal and its resolution being the most serious problem and the influence of third parties being the least serious problem.

In general, the influence of third parties is not considered a problem at all, either in Australia or in the remaining OECD countries, which is quite different from the finding for the tax law enactment process. Furthermore, inconsistent decisions are a much less severe issue in appeals than in audits. When comparing Figure 10 and Figure 11 in more detail, a large difference can be observed for the time period between the filing of an appeal and its resolution, both for Australia and the remaining OECD countries. The problems with this complexity driver are much more severe at the judicial level than at the administrative level. For Australia, this might be explained by the fact that the ATO has committed itself to a resolution of objections within 120 days.<sup>78</sup> The AAT is also dedicated to initiating the review process within six weeks after the application has been filed.<sup>79</sup> In contrast, decisions at the judicial level can take months or even years, thus making the time period unpredictable.<sup>80</sup> A similar argumentation might also apply to several other countries. The relatively low share of respondents selecting the lack of specialized judges as a problem in Australia is, to some extent, surprising. As Australia does not have any courts that deal exclusively with tax issues, there is an ongoing debate regarding the establishment of such courts.<sup>81</sup> The survey results, however, provide evidence that the absence of specialized courts does not result in a lack of specialized judges or overly inconsistent decisions compared to the remaining OECD countries.

#### **4. Conclusion**

In this article, I comprehensively analyze corporate income tax complexity as faced by MNCs in Australia and compare the Australian results to those of the remaining OECD countries. For this purpose, I employ the data of the 2016 Global MNC Tax Complexity Survey, which was conducted by Hoppe et al. My analysis shows that the Australian tax code is considerably more complex than the OECD average, which is mainly due to overly complex anti-avoidance legislation, such as regulations on transfer pricing, general anti-avoidance or CFC. Excessive details and ambiguity and interpretation are seen as the main complexity drivers of these regulations. Australia is close to the OECD average with regard to the tax framework. While the tax law enactment process is significantly more complex in Australia than in the remaining OECD countries, the opposite is true for tax appeals. The other three dimensions of the tax framework (tax filing and payments, tax guidance, and tax audits) largely correspond to the OECD average, while again, significant differences can be observed in a more granular analysis. Overall, the analysis reveals that Australia sometimes is, indeed, excessively complex. However, for several issues, the Australian complexity levels can be observed to be “normal” in the OECD context.

I have to acknowledge that my results refer to the year in which the survey was conducted, i.e., the year 2016. This implies that they are not fully reflective of the present situation. For example, Australia introduced the diverted profits tax as an additional general anti-avoidance measure in 2017, giving rise to the assumption that the complexity of this dimension might have grown further. Furthermore, my research setting does not allow for inferences to be drawn on

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<sup>78</sup> See [www.ato.gov.au/General/dispute-or-object-to-an-ato-decision/object-to-an-ato-decision/how-we-deal-with-your-objection/](http://www.ato.gov.au/General/dispute-or-object-to-an-ato-decision/object-to-an-ato-decision/how-we-deal-with-your-objection/).

<sup>79</sup> See [www.aat.gov.au/steps-in-a-review/taxation-and-commercial/taxation-and-commercial/what-happens-after-lodgement](http://www.aat.gov.au/steps-in-a-review/taxation-and-commercial/taxation-and-commercial/what-happens-after-lodgement).

<sup>80</sup> See Australian Taxation Office (2019).

<sup>81</sup> See Hill (1995), Chapple (1999) and Kirby (2007). An overview of this discussion is provided by Barkoczy (2016).

the “right” level of tax complexity or to distinguish between necessary and unnecessary complexity.<sup>82</sup> However, the comparison with the average OECD values might serve as an anchor point, e.g., for policy-makers, to critically evaluate the situation in Australia and to identify those issues that need simplification most urgently in light of tax competitiveness.

This article provides a valuable contribution to the existing academic literature and paves the way for future Australian studies. As Hoppe et al. will continue to carry out the Global MNC Tax Complexity Survey, this article might be seen as the starting point for a comprehensive analysis of corporate income tax complexity in Australia over time. With more data becoming available, it will also be possible to keep track of the impact of certain tax reforms and the developments in important peer countries, e.g., the remaining OECD countries. When being considered jointly with the progress made in other research areas, such as the compliance cost estimation model by Wu and Tran-Nam (2017), this article and the potential future follow-up studies might be steppingstones to an enhanced understanding of tax complexity.

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<sup>82</sup> For discussions, see Australian Government (2015), Evans et al. (2015), James et al. (2016), Tran-Nam et al. (2016) or Evans et al. (2019).



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