



Dr Kathleen Dermody
Committee Secretary
Senate Economics References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By Email: economics.sen@aph.gov.au

2 February 2015

Dear Dr Dermody

We refer to your letter dated 2 October 2014 in which you invite PricewaterhouseCoopers Australia ('PwC Australia', 'We' or 'Our') to make a submission in response to the Senate Economic Reference Committee Inquiry in relation to "tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia" ('the Inquiry').

Please accept this letter as the submission made on behalf of PwC Australia in response to the Inquiry.

1. Summary

Australia has robust international tax rules in our legislation and the Australian Taxation Office ('ATO') is a very capable and tough administrator. That being said, in our opinion, the global tax system is out of date and needs to be reformed and updated as the structure and nature of commerce and business develops.

PwC Australia supports the efforts of the OECD and the G20 with the Base Erosion and Profit Shifting ('BEPS') 15 point action plan and their efforts in ensuring that local and global tax systems are up to date and conducive to international trade and investment.

We believe effective reform of the global tax system will only be achieved if all (or a large majority) of the key global economies participate in a cooperative, coordinated and consistent way.

In order to rebuild trust in the tax system and maintain the integrity of Australia's tax base, we acknowledge that increasing the transparency of tax payable is an important measure. PwC Australia supports increasing appropriate tax transparency in the public domain that genuinely supports a better understanding. PwC Australia is also supportive of the OECD's efforts to improve global transparency at a policy level, for example, through the introduction of Country by Country to tax authorities. We are also very optimistic that the Inquiry will also inform the public debate and help to fortify community trust in the tax system.

To fund Australia's future, we believe Australia needs broad based tax reform. All facets – from GST to land tax – must be on the table. Comprehensive tax reform must deliver a grand bargain that



underpins economic growth, looks after the vulnerable, protects low income groups and delivers secure budgets at all levels of Government.

PwC Australia will continue to engage in the reform process to assist in the improvement of tax law. We regularly engage policy and law makers to support this process. That said, the role of professional services firms like PwC is to provide tax advice to companies in accordance with current laws. As we give advice to our clients, we do so with ethical guidelines applicable to our profession and we encourage them to think through the reputational impacts of their planning actions. We are proud of PwC Australia's role in providing tax advice to companies to efficiently manage their tax obligations in accordance with the current laws and in accordance with our Global Tax Code of Conduct (discussed in more detail in Section 3).

It is critical that Australia's tax system enables economic growth for the benefit of all, and that our national and international tax reform conversation considers all facets of tax policy and law. The tax reform debate should be balanced and fact based as the underlying principle of Australia's tax system is self assessment. PwC Australia welcomes the opportunity to play a part in this conversation. We will continue to advocate for sound policy and the contributions businesses and our clients make to society.

2. Introduction

PwC Australia acknowledges that public interest in the tax affairs of multinational businesses has never been greater than it is today. The key issues are whether the global tax rules, found in tax treaties and domestic laws of nations, are fit for purpose in today's globalised and digital world and the desire for greater transparency. It is with this in mind the following submission is made.

3. PwC

PwC is the brand under which the member firms of PricewaterhouseCoopers International Limited ('PwCIL') operate and provide professional services. PwCIL's purpose is to act as a co-ordinating entity for PwC member firms in the PwC network. The member firms of PwCIL together form the PwC network. 'PwC' is often used to refer either to individual firms within the PwC network or to several or all of them collectively. For the purposes of this submission, the term 'PwC Australia', 'we' or 'our' refers to the Australian member firm and the term 'PwC' refers to the PwC network of member firms.

PwC has adopted a Global Tax Code of Conduct to assist their clients, other stakeholders and their respective partners and staff in the delivery of its professional tax services. Under the PwC Global Tax Code of Conduct, the main objective of the tax practices of PwC is to support their clients to:

- understand and comply with their legal and regulatory obligations for taxation;
- plan their affairs so as to be tax efficient in the business or, where the client is not a business, financial decisions they make; and
- manage the tax risks they face. These include their compliance obligations and, in the case of businesses, corporate governance and tax related financial accounting risks centred on relevant internal controls and appropriate financial reporting.

In addition to this, the Global Tax Code of Conduct requires PwC to:

- act in accordance with local laws and regulatory requirements;
- give proper disclosure as required by those laws or requirements;
- strive to apply the highest possible technical standards; and



- comply with professional standards of integrity and objectivity.

All of the fundamental principles of this code need to be read together by our people, not just one or more in isolation, and the requirement to advise our clients on how their actions may be viewed by others is as important a feature in today's world as the technical analysis.

A copy of the PwC Global Tax Code of Conduct has been appended to this submission for your reference.

Australia's tax laws are highly complex and are at times open to interpretation. Because of this, intermediaries, such as PwC Australia, play a vital role in enabling participation in Australia's tax system and contributing to its operation. Just as the tax laws are set by Australia's elected Parliament, and the tax system is administered by the ATO, qualified tax advisers provide a vital service by helping people understand the complexity and structure of tax rules.

PwC is the leading provider of tax services worldwide in terms of both the size and scope of our tax practice. PwC Australia works with a range of clients including large corporates, small businesses, individuals and not for profits. We are proud of the tax services we provide and the contribution we make to enable community groups manage their tax obligations in accordance with the law.

PwC Australia is front and centre in the tax reform debate and will continue to collaborate with all sectors of our community and support Government initiatives which are aimed at promoting transparency and accountability in the tax system. That said, the role of professional services firms like PwC Australia is to provide tax advice to companies in accordance with current laws. There is, without a doubt, a fairness angle to this debate. Fairness and ethics need to form part of the debate as tax laws are reviewed and reformed but, once set, businesses and their advisers have to work within the framework of the law. We provide our clients advice in accordance with our Global Tax Code of Conduct and encourage our clients to think about how their planning actions will be viewed by others. All that said, business needs certainty to build confidence, from which economic growth and community prosperity results.

4. Terms of Reference

(a) The Adequacy of Australia's current laws

The global tax regime and the Australian tax system was not originally designed to deal with the global nature of many businesses or the digital economy in which we now operate. PwC Australia recognises key policy challenges include:

- double non-taxation not intended by policy;
- double taxation not intended by policy;
- taxation of profits where they are generated; and
- the imperative for certainty based on the rule of law as a condition for business confidence, resulting in increased investment and trade which contribute to Australia's growth and prosperity.

Notwithstanding the above challenges, Australia's system of anti-avoidance provisions, the Australian international tax rules (CFC, thin capitalisation, transfer pricing and other tax rules), and the administrative powers of the ATO, ensure Australia has a robust tax regime to defend the Australian



tax base. Indeed given the need for a globally effective tax system, any reform not carefully coordinated with the global process may damage Australia's economy.

PwC's Annual Global CEO survey, released on 20 January 2015, indicated that 74 percent of Australia's CEOs thought a priority of Government should be to ensure an internationally competitive and efficient tax system, with 69 percent believing the Government has been ineffective in achieving this. A link to the Australian section of this survey has been appended as a footnote to this submission for your reference.ⁱ

PwC Australia has been actively engaging through numerous forums to discuss tax reforms – bringing our expertise and experience to the table with community groups, the Australian Treasury, the ATO, the OECD and others.

Until the Australian Parliament enacts new laws, businesses, citizens, Governments, tax administrators and all members of our community are all subject to the law as it currently stands. In our capacity as advisors, PwC Australia's role is to work with our clients so that they can navigate complex and, often, uncertain laws and to efficiently manage their tax obligations within these laws. In fulfilling this role, PwC Australia engages our clients in a range of commercial issues – including risk across global tax laws, and risk in respect to legal position and community perception.

(b) Any need for greater transparency to deter tax avoidance and provide assurance that all companies are complying fully with Australia's tax laws

In order to rebuild trust in the tax system and maintain the integrity of Australia's tax base, PwC Australia acknowledges that increasing the transparency of tax payable is an important measure. There are two angles to this:

- *Informing the public:* If communicated meaningfully and appropriately, increasing transparency of tax payable will inform and educate the public in the operation of the tax system as well as the contribution that businesses make to Australia's economy.
- *Informing Governments and Tax Administrations:* Greater transparency in the tax system will enable Governments and Tax Administrations around the world to enforce current laws more effectively and develop new laws targeted at behaviors that emerge from the information disclosed which were not intended by policy.

PwC Australia supports increasing tax transparency in the public domain. PwC Australia is also supportive of the OECD's efforts to improve global transparency at a policy level, for example, through the introduction of Country by Country reporting.

(c) The opportunities to collaborate internationally to address the problem

PwC Australia considers that a unilateral approach by particular Governments and Tax Administrations to modernise the global tax rules is unlikely to be effective and may have negative consequences. PwC Australia supports the efforts of various Governments around the world, the OECD and the G20 in working towards a unified movement of tax reform to ensure that global tax rules remain current with business evolution. The ability of Tax Administrations to exchange information is a crucial element in tackling the problem of global tax evasion. PwC Australia endorses Australia's role in promoting information exchange amongst revenue authorities and supports the G20's endorsement of the OECD's Common Reporting Standard.



(d) The performance and capability of the ATO to investigate and launch litigation in the wake of drastic budget cuts to staffing numbers

PwC Australia respects the ATO's capability to investigate and launch litigation. From the perspective of PwC Australia's dealings with the ATO, we have not seen any change in the ability of the ATO to function effectively and efficiently since the introduction of the budget cuts, particularly in light of the ongoing audit and litigation pursued by the ATO that we are aware of.

(e) The role and performance of the Australian Securities and Investments Commission in working with corporations and supporting the ATO to protect public revenue

PwC Australia supports the work that ASIC does in collaboration with the ATO to protect Australia's revenue base. PwC Australia is aware that ASIC signed an agreement with the ATO in 2007 to strengthen their working relationship and better facilitate opportunities to target tax crimes. PwC Australia is particularly aware of the success that the ATO have had in combating illegal phoenix activity with the assistance of ASIC and encourages this inter-agency co-operation.

(f) Any relevant recommendations or issues arising from the Government's White Paper process on the 'Reform of Australia's Tax System'.

PwC Australia has actively participated in the Australian tax reform conversation, publishing a series of 'Protecting our Prosperity' thought leadership publications in partnership with an advisory panel comprising leading business, community, academic and union representatives. These publications 'Why we need to talk about tax'ⁱⁱ and 'How do we fix a tax system?'ⁱⁱⁱ can be found at the PwC Australia website.^{iv}

Yours sincerely,

Tom Seymour
Managing Partner – Tax & Legal

ⁱ PwC's 18th Annual Global CEO Survey, Australian report and analysis, available at: <http://www.pwc.com.au/about-us/ceo-survey/assets/Global-CEO-Survey-report-AU-Jan15.pdf>

ⁱⁱ PwC Australia, 'Why we need to talk about tax', July 2013, available at: <http://www.pwc.com.au/tax/assets/Protecting-prosperity-22Jul13.pdf>

ⁱⁱⁱ PwC Australia, 'How do we fix a tax system?', April 2014, available at: <http://www.pwc.com.au/tax/taxtalk/assets/monthly/pdf/Protecting-prosperity-Apr14.pdf>

^{iv} PwC Australia, Taxation – Tax reform (online) Pwc.com.au 2015. Available at: <http://www.pwc.com.au/tax/tax-reform/index.htm> [Accessed 28 Jan 2015]



Appendix

Tax code of conduct for the global PwC network

Governments enact laws and enter into treaties with other nations so as to determine how companies and other taxpayers should be taxed. These laws are then interpreted by taxpayers, taxing authorities and, ultimately on occasion, by the courts.

It is a general principle that taxpayers have a legal right to manage their tax affairs provided they act within these laws. However, the global nature of the business world together with the complexity and competing priorities of national laws are such that it is not always clear where lines should be drawn. Accordingly, the member firms of the PwC¹ Network have adopted the following code of conduct to assist their clients, other stakeholders and their respective partners and staff.

What PwC firms do

The main business objective of the tax practices of PwC firms is to support their clients to:

- understand and comply with their legal and regulatory obligations for taxation;
- plan their affairs so as to be tax efficient in the business or, where the client is not a business, financial decisions they make; and
- manage the tax risks they face. These include their compliance obligations and, in the case of businesses, corporate governance and tax related financial accounting risks centered on relevant internal controls and appropriate financial reporting.

Who PwC firms should act for

PwC firms should only work with clients that generally seek to demonstrate high standards of legitimacy and integrity in their business and financial activities. Before accepting clients, and in continuing to work with existing clients, PwC firms should look to satisfy themselves that the client intends to seek to comply with their legal and regulatory obligations in relation to taxation. In this regard we should pay particular attention to all of the following:

- the reputation of the client and the conduct of its/their activities;
- understanding who is behind the client in terms of control, influence and the legitimacy of any financial interests or funding;
- the integrity and reliability of management/individuals including their responses following situations in which actions may have fallen below the appropriate standards;
- relevant ethical, professional and regulatory requirements; and
- other relationships and potential conflicts of interest.

How PwC firms should act

PwC firms should:



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- act in accordance with local laws and regulatory requirements;
 - give proper disclosure as required by those laws or requirements;
 - strive to apply the highest possible technical standards; and
 - comply with professional standards of integrity and objectivity.

In addition, work performed by PwC firms should be undertaken in accordance with the following principles:

- A. All tax advice which results in positions taken in a client's tax return must be supported by a credible basis in tax law. Tax law is often subject to differing interpretations. It is open to a client to take a position which differs from the most commonly held interpretation but this should be consistent with the standard applicable in each country concerned and, as a minimum, on the basis that there is reasonable support in law and proper disclosure.
- B. No tax advice should rely for its effectiveness on any tax authority having less than full facts. Any advice that a PwC firm gives should include advice on, and be based on the assumption that the client will make, relevant disclosures which will be sufficient both to comply with the law and to enable tax authorities to make further enquiries should they wish to do so. Disclosure will also include the registration of tax avoidance arrangements with the tax authorities where this is required by law or regulations, and any other information-sharing obligation to the tax authorities to which the client may be subject.
- C. Tax advice should be given in the knowledge of the actual facts and circumstances of the client concerned. PwC firms should always operate on the basis that they seek to know their clients and their business or financial affairs. Recommending a particular course of action should follow discussion with the client. Tax planning that does not fit with a client's facts and circumstances should not be recommended.
- D. Tax advice should always involve discussion of the wider risks involved, including how a client's actions might be viewed by others. Tax planning, like many other matters, involves the balancing of various risks. These risks include tax technical, legal and related areas (e.g. the risks that a tax authority may take a different interpretation of the relevant tax law, or that a particular tax planning strategy will not ultimately be effective), but also include reputational and commercial risks arising from the way others (e.g. shareholders, government, taxing authorities, etc.) might view a particular course of action. Advice from PwC firms should always involve proper consideration and discussion of these issues with the client. Whilst ultimately it is for each client to decide how they wish to plan their own tax affairs within the law, a PwC firm should be satisfied that the client has a full understanding at the appropriate level of responsibility of the potential consequences of their actions.
- E. We are advisers on tax planning and not principals or counterparties. Our business includes advising clients on tax planning. We will not act as principals or counterparties in tax planning with our clients as to do so would compromise our objectivity.
- F. There are certain types of planning arrangements which, although legal, PwC firms should not propose or recommend implementing to clients. PwC firms should advise clients of appropriate options available to them under the law. However, where a client is a company or other business entity, PwC firms should only propose or recommend the implementing of planning arrangements where at least one of the following apply:
 - I. the underlying business arrangements have some commercial purpose other than the avoidance of tax; or
 - II. the tax outcomes of the arrangements are consistent with the intention of the relevant tax law, other relevant law, regulation and administrative arrangements (as



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- III. demonstrated by publicly available statements or evidence of an equivalent standard) in the country concerned or the international treaties it has entered into; or the planning has or creates economic or commercial consequences or effects including the necessary economic substance (as required by tax law, other relevant law, regulation and administrative practice) in each location to achieve those effects.

Where a client is not a company or other business entity (such as an individual or a trust), the above alternative tests are not appropriate. For example, concepts of commerciality may not be relevant to their actions (e.g. gifts). Nonetheless, PwC firms should seek to exercise judgement over the types of planning that should be proposed to, or implemented on behalf of, such clients.

Originally issued 2005 and most recently revised July 2013.

1 - PwC helps organisations and individuals create the value they're looking for. We're a network of firms in 157 countries with more than 195,000 people who are committed to delivering quality in assurance, tax and advisory services. Tell us what matters to you and find out more by visiting us at www.pwc.com.