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Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

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Dear Committee Members,

Introduction

1. The Australian Taxpayers' Alliance (ATA) welcomes the opportunity to make a submission to the committee on the Treasury Laws Amendment (Combating Multinational Tax Avoidance) Bill 2017 and Diverted Profits Tax Bill 2017 currently being considered.
2. The ATA is a grassroots, free-market advocacy group, consisting of over 25,000 members nationally. The ATA stands for the principles of limited government, personal responsibility and removing the regulatory burdens upon individuals or businesses.
3. The ATA supports the principles of fairness, clarity and accountability in our taxation system and supports reducing the compliance burdens on taxpayers.
4. The ATA notes that a submission from the Institute of Public Affairs (IPA) (Submission 01) that has been received by the committee and supports this submission. The IPA submission provides extensive peer reviewed research that further supports some of the concerns raised in our submission.

Issues with the proposed legislation

5. The ATA acknowledges that aggressive tax avoidance schemes which are technically legal but not within the spirit of the law are of concern to the Government. However, the proposed legislation is an unideal way to approach this issue.
6. The ATA notes that Australia has made commitments to the OECD for combating multinational tax avoidance including a collaborative strategy to address the issue. This includes the 2010 strategy for Base Erosion and Profit Shifting (BEPS). Whilst there is the capacity for changes to domestic tax law as part of this strategy, the proposed legislation means that Australia acts unilaterally on the issue. Considering this international effort, an attempt by Australia to follow the United Kingdom's lead in acting unilaterally for domestic political ends risks impacting these international efforts and affecting goodwill and cooperation with other nations.
7. The ATA also notes that there is not a clear picture of the scale of the problem. Whilst the ATO suggests that there are over \$60bn worth in related party transfers internationally, the actual extent of related party transfers structured primarily for tax minimisation is unknown.¹ The proposed changes are only expected to gain \$200m in increased revenue across the forward estimates. This is partly because many of these transfers are not only legal but within the spirit of the law. This is also because of the complexity of addressing this issue. Many companies would derive significant tax benefits even though not structured primarily for the purpose.
8. The proposed legislation is based off similar legislation in the United Kingdom. This legislation was referred to as a "Google Tax" in the media as having the aim of making large corporations like Google change their tax structures and pay more tax. However, it is reported that Google does not pay the Diverted Profits Tax. Whilst Google has struck a deal to amend its past returns to pay more tax, this falls primarily outside of the timeframe of the Diverted Profits Tax. In addition, it continues to operate with a structure that involves transfers of

¹ <http://www.smh.com.au/federal-politics/political-news/treasury-does-not-know-how-much-revenue-australia-is-losing-to-multinational-profitshifting-20150409-1mhqke.html>

payments to Ireland, a country with a low headline corporate tax rate.²

9. The ATA also echoes concerns made in various submissions made in earlier stages such as in response to the discussion paper about the potential for legitimate transactions to be caught in the broad net of the DPT and the pay up first then prove your innocent later approach risks hurting the operations of businesses acting legitimately within both the letter and the spirit of the law as well as undermining the good will that the Australian Taxation Office has built up over the years through its shift from a punitive fear based approach to a constructive and co-operative approach to tax compliance.
10. The ATA believe that the high headline corporate tax rate in Australia and the comparatively lower tax rates in many jurisdictions, as well as the proposed corporate tax rate cuts in the United states means that many business will be able to operate with normal, fair structures and not only avoid the propose tax but continue to make significant savings in jurisdictions with low headline corporate tax rates. Alternatively, if this is not the case then it means that companies with legitimate and normal international structures are being punished by the ATO despite not seeking to aggressively minimise their tax contribution. For example, the US proposes halving its rate from 30% to 15%. As such many US based tech firms will find significant advantage in focusing its efforts to invest elsewhere and possibly face a penalty tax rate in Australia despite booking profits through a country where they operate with economic substance because of the complexity of the law and the ability of the Tax Commissioner to use this legislation as a tool of first resort. Whilst the regulatory impact statement plays down the chilling effect on investment, the ATA submits that this consideration requires more evidence to be sound, particularly considering the broader issue of tax competition.
11. The ATA also notes the complex nature of Australia's Tax System and the difficulty and cost of compliance. This has been the result of implementing regulations in a patchwork manner. This proposed legislation continues to build onto the 14000 pages of legislation. The ATA believes that a holistic approach to tax reform would allow the government to address the issue of tax avoidance in

² <http://www.thetimes.co.uk/tto/money/tax/article4677453.ece>

a far more effective and fairer way whilst bringing down compliance costs.

Recommendations

12. The ATA urges the committee to not recommend proceeding with the proposed legislation.

13. The ATA submits that measures to address tax avoidance should be done through broader tax reform that simplifies the entire system.

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