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Senate Finance and Public Administration Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
(submitted via email to [fpa.sen@aph.gov.au](mailto:fpa.sen@aph.gov.au))

## The current capability of the Australian Public Service (APS)

The Centre for International Corporate Tax Accountability & Research (CICTAR) thanks the Committee for the opportunity to provide a submission with regards to the current capability of the APS's digital and data capability. While expanding the government's digital and data capability is essential there are major concerns that the APS's significant expenditures on external IT (information technology) contractors are not:

- providing taxpayers with value for money;
- building long-term reliable capacity within the APS; and
- that many large IT contractors have a track record of tax avoidance.

When external contracts are required, preference should be given to companies that make the greatest contribution to the Australian economy through technology transfer to the APS, innovation, high-quality jobs and income tax payments.

Greater scrutiny is required for awarding all IT contracts to ensure that technical capacity is built and sustained within the APS. In particular, the global tech giants – dominating one of the few sectors to benefit financially from the global pandemic – have a notorious track record of tax dodging. The tax dodging of tech giants has pushed dozens of countries to legislate and implement new digital service taxes and is driving ongoing OECD discussions to reform the outdated global tax system.

The Australian government should consider adopting a digital profits tax as an effective approach to taxing tech giants and one that will help drive more meaningful multilateral changes in the future. Additionally, as a simple and effective interim measure any multinational corporation, as a condition of receiving federal contracts, should be required to implement the Global Reporting Initiative's (GRI) tax standard. This widely accepted global standard requires transparency on tax payments, including public country by country reporting. These proposals are discussed in more detail below.

As a basic common-sense proposition, the federal government should not reward multinationals with contracts when they engage in aggressive tax minimisation schemes. The evidence below suggests that many major IT contractors continue to avoid paying taxes in Australia and globally. Federal procurement provides a valuable opportunity to raise standards of transparency and fairness across the broader market. Domestic companies and responsible taxpayers are at a significant competitive disadvantage in obtaining federal contracts if competitors are minimising tax and other obligations and responsibilities. It has been a stated priority of the government to support innovation through contracting with local tech companies. However, major tax dodging tech giants continue to be rewarded with the largest federal IT contracts.

Twenty-eight companies were awarded **\$4.4 billion in federal contracts for IT services in 2020**. This was **28%** of the contract value of the top 100 suppliers, excluding the top 7 defence contractors. Of the 28 companies *only 4 are Australian*. These 28 companies have received **\$57 billion** in federal contracts. Excluding Telstra, *only 8% went to the 3 Australian companies*. (Details in Appendix 1) A significant feature of federal IT contracts is the high level of labour hire and temporary workers. This indicates that key work is done by external contractors and knowledge and capacity are not being developed with the APS. The use of external labour is likely to cost more than developing IT capacity within the APS and deepens reliance on future outsourcing contracts with costs escalating further over time. Multinationals can undercut domestic competitors and take losses in order to lock in initial contracts.



## Overview

While there have been commitments to support local IT companies through federal contracts, it does not appear that those commitments have been met. Multinational tax dodging tech giants still dominate federal IT contracts and Australian companies do not seem to be given the same opportunities. In 2017, Angus Taylor, then Assistant Minister for Digital Transformation, pledged to “share a big slice of the \$9 billion [federal government’s IT budget] pie with small local players”.<sup>1</sup>

Mr Taylor argued “that a greater involvement of small local players will dramatically lessen the risks of more public sector tech wrecks like the infamous Census fail, the recent Tax Office meltdown, the Child Support payment debacle and others.”<sup>2</sup> In addition to promoting reforms to support innovation by seeking to contract with local small tech firms and start-ups, the Minister was also promoting “an upskilling of the public service to reduce the over-reliance on private contractors who often reap massive windfall profits from taxpayer-funded projects that go long over schedule and over-budget, sometimes by hundreds of millions of dollars.”<sup>3</sup>

However, it appears that the outsourcing federal IT work – which could be more effectively done through the APS – has only increased since then. To the extent that outsourcing IT is required, Australian tech companies, without a track record of aggressive tax avoidance schemes, continue to face a major competitive disadvantage. Awarding contracts to these multinationals has been to the detriment of local companies that are capable of delivering the same services with higher standards and greater benefits to the Australian economy.

The following provides case studies which highlight tax avoidance issues with some of the largest federal IT contractors. The information provided is by no means comprehensive and builds on previous analysis by CICTAR of IBM, Accenture, Oracle, SAP and Amazon. In particular, information on Oracle and Accenture is largely based on CICTAR’s [response](#) to a question on notice from a Senate Inquiry into privatisation. That response from November 2019 provides comprehensive sources. While more recent sources have not been fully examined, the underlying information remains the same.

Oracle and Accenture were each part of competing consortiums for the privatisation of visa processing. After the government spent over \$80 million, the visa privatisation effort was officially scrapped.<sup>4</sup> However, there remain concerns that the privatisation effort is being re-branded and still moving forward. Large IT contracts could end up with some of the same tax dodging tech giants that were previously bidding to run a privatised visa processing scheme.

In response to a question on notice from the privatisation inquiry, the Department of Home Affairs supplied [draft contract language](#) for the proposed visa privatisation contract. This strong contract language – forbidding contracts with tax avoiders – is highly commendable and should become a model. Based on this language, both Oracle and Accenture would have likely been excluded from the contract. Adopting this language broadly in federal contracts would set a positive example on the role of public procurement in increasing transparency, encouraging responsible tax practices and leveling the playing field for all companies.

Information in this submission on IBM and SAP is largely based on [previous CICTAR submission](#) to this committee from February 2020 on a bill that proposed requiring disclosure of tax havens used by federal contractors. CICTAR identified 10 federal contractors (also including Oracle, Accenture and Amazon) that had been awarded \$56 billion in federal contracts since 2007 and extensively used tax haven subsidiaries in global corporate structures.



CICTAR also produced a report in December 2018, *Exposing Corporate Webs*, that examined tax practices of outsourced service and labour hire corporations with major contracts with the Australian Taxation Office. Despite the serious concerns raised in that report and covered in detail by the [ABC](#), Stellar Asia Pacific Pty Ltd was awarded a new \$55.4 million contract with Service Australia in February 2020 for “Surge services due to COVID-19”.<sup>5</sup> Other companies included in the report have also received major new federal contracts.

In addition to the issue of tax avoidance, in many cases multinationals have failed to effectively deliver on federal contracts. Multinationals have also not been vetted for contract performance or failures in other jurisdictions.<sup>6</sup> A widely acknowledge failure of outsourced federal contracting – and now ruled illegal – is the \$130 million spent on labour hire companies for the recent robodebt scheme.<sup>7</sup> The contracts were awarded to the Chandler Macleod Group, owned by Japanese multinational Recruit Holdings, and Adecco, the Swiss-based global labour hire giant. According to the 2018-2019 ATO corporate tax data, Adecco had \$632 million in total income, but zero in taxable income and paid no corporate income tax. RGF Staffing Melbourne One Pty Limited, the top Australian company for the Chandler Macleod Group (Recruit Holdings) had total income of \$1.724 billion but paid only \$8.7 million in corporate income taxes.

Some preliminary information on Dell is provided below, but a further examination of Dell and other federal IT contractors would require additional time and resources. KPMG, Deloitte, PwC and E&Y – the Big Four accounting firms – all have major federal contracts related to IT but have not been analysed in this submission. The role of the Big Four in federal contracts and tax avoidance has been examined elsewhere. Multinational corporations focussed on labour hire, including Hays, Adecco (Modis), Ranstad, Recruit Holdings (Chandler Macleod), Persol (Programmed) and Outsourcing, Inc (Hoban Recruitment, Clicks, etc...), with significant involvement in federal IT contracts are the subject of forthcoming CICTAR research.

## **IBM**

IBM is a US-based IT multinational and ranked as the 18<sup>th</sup> largest federal government contractor in 2020 with contracts valued at over \$250 million. IBM has received contracts valued at \$9.361 billion since 2000. According to ATO corporate tax transparency data, in 2018-19, IBM had taxable income of \$60 million on revenues of \$3.26 billion in Australia but paid nothing in corporate income tax.<sup>8</sup> “IBM also paid no tax in 2017-18, 2016-17 and 2015-16, despite generating multi-billion dollar revenues.”<sup>9</sup>

Despite major failures on government contracts in Australia, the federal government continues to reward IBM with new contracts. In 2016, IBM’s failure to deliver on a contract for payroll services with the Queensland government ended up in court and cost taxpayers an estimated \$1.2 billion. The “debacle” was “described as possibly the worst public administration failure in Australia.”<sup>10</sup> IBM also agreed to pay the federal government \$30 million in 2016 after a major disaster on the census. Then Prime Minister Malcolm Turnbull stated that “overwhelming the failure was IBM’s and they have acknowledged that.... They were paid big money to deliver a particular service and they failed.”<sup>11</sup>

Despite the 2016 failure and concerns by IT analysts, in 2018 IBM was awarded a new landmark \$1 billion whole of government contract. Dr Wissam Raffoul, an adviser with ICT consultancy IBRS, said, “It’s the same bad practice that went wrong before but we’re doing it again now under the name of new technology or digital transformation.”<sup>12</sup> IBM stated that the



“agreement, led by the Digital Transformation Agency (DTA), is the highest value contract negotiated by the Australian Government...[and] positions IBM as one of the most established, transparent and easy to engage government technology partners.”<sup>13</sup> More recently in 2020, IBM was awarded another \$107 million contract with the Australian Taxation Office.<sup>14</sup> This contract was awarded a month following IBM entering an enforceable undertaking with the Fair Work Ombudsman to pay more than \$12 million to over 1,600 Australian employees after IBM “failed to pay entitlements, such as superannuation and annual leave loading.”<sup>15</sup>

Ultimately IBM’s Australian business is owned through the Netherlands, a tax haven frequently used by multinationals. When previously examined, the parent entity for IBM’s business in Australia and New Zealand was IBM A/NZ Holdings Pty Limited, a subsidiary of IBM AP Operations B.V, headquartered in the Netherlands. IBM’s annual filing (10-K) with the US Securities & Exchange Commission discloses two subsidiaries in Australia – IBM Australia Limited and IBM Global Financing Australia Limited – yet there are at least six other entities registered with ASIC, including one in the Philippines. Is it possible that some of IBM’s federal IT contracts are handled through the Philippine subsidiary?

The financial report for IBM A/NZ Holdings Pty Limited shows that in 2018, the company paid \$330 million in dividends to its immediate parent entity in the Netherlands. In addition, it paid nearly \$393 million in ‘software fees’ to the ultimate parent entity in the US. In 2018, IBM A/NZ Holdings Pty Limited had loans worth over \$2 billion from the immediate parent company in the Netherlands at interest rates of 3.82% to 6.74%. IBM International Treasury Services Company (Ireland) held deposits of nearly \$258 million for the Australian company, down from \$1.1 billion in 2017, at the substantially lower interest rate of 1.7%. These measures are likely continuing and may help explain how IBM reduces its reported taxable profits in Australia, shifts them to tax havens and continues to pay zero income tax in Australia for several years running.

IBM’s complex global corporate structure enables the company to engage in aggressive tax planning and to operate with reduced transparency. It appears that a significant proportion of its global business, including the Asia-Pacific region, occurs through a chain of holding companies domiciled in the Netherlands. Meanwhile, finance to these companies is extended via IBM International Treasury Services Unlimited Company registered in Ireland. IBM International Treasury Services is exempt from filing financial returns, yet it funnels billions to and from IBM subsidiaries around the world. The immediate UK parent of the Irish Treasury Services company also has 5.06% holding in IBM Treasury Corporation in Barbados. It is not clear how the Barbados company is used, or the multitude of other IBM tax haven subsidiaries, some disclosed and some not disclosed.

IBM was under audit by the IRS in the US for 2013, 2015 and 2016, and has an active dispute with Indian tax authorities. IBM has paid settlements of at least US\$640 million and US\$250 million in interest and penalties to tax authorities since 2016.

### **Accenture**

Accenture plc is publicly listed in the US but incorporated in Ireland. Accenture is a major government contractor and has received at least \$3.4 billion in federal contracts.<sup>16</sup> Accenture received over \$170 million in federal contracts in 2020, ranking as the 37<sup>th</sup> largest federal contractor. This does not include the \$66 million awarded to Accenture’s APIS Group Pty Limited subsidiary in 2020. APIS separately ranked as the 96<sup>th</sup> largest federal contractor.



Accenture's primary Australian company, Accenture Australia Holdings Pty Ltd is owned by Accenture Australia Holdings BV in the Netherlands. A search of the Dutch company registry shows that Accenture Australia Holding BV is owned through Accenture Holdings BV and Accenture International BV, both in the Netherlands, which is in turn owned by Accenture Global Holdings Limited in Ireland. Limited information is available from the Dutch or Irish filings of these entities.

Globally, Accenture reported operating margins of 14.8% and 13.3% in 2018 and 2017 compared to Australian margins averaging under 7.4% over the last 5 years. This gap may be an indication of significant profit shifting, unless the Accenture's Australian business is roughly half as profitable as other global operations? Accenture's Australian profit margins have declined every year to 4.9% in 2016/17 but rose slightly to 5.2% in 2017/18 and 8.5% in 2018/19. In 2018, Accenture's related party transactions of nearly \$1.1 billion may have facilitated shifting of profits from Australia to tax havens, primarily the Netherlands and Ireland. Based on the most current ATO corporate tax data, it appears that the same pattern continues in 2018-19 with Accenture paying only \$39.5 million in income tax after generating total revenue of \$2.22 billion in Australia.

Accenture was previously owned through Bermuda. However, in the face of criticism over tax avoidance it switched to being incorporated in Ireland in 2009. Besides large numbers of Irish and Dutch subsidiaries, Accenture continues to have subsidiaries in other tax havens, including Gibraltar, Hong Kong, Luxembourg, Mauritius, Singapore and Switzerland. Accenture's Irish holding companies may be non-resident companies, registered in other tax haven jurisdictions and not even subject to Ireland's already low corporate tax rate of 12.5%.

In 2018, the *Financial Times* reported that a probe by British tax authorities covering an 8-year period and "related to a transfer pricing inquiry of routine transactions" resulted in a £77 million payment. The "tax charge is the latest in a series of tax-related controversies for Accenture" which was spun out of Arthur Andersen (Enron's auditor) in 1989. In 2017 Accenture paid £150 million to settle a tax dispute with Swiss authorities related to the "treatment of an intercompany transfer of intellectual property". This case had been exposed in the Lux Leaks scandal involving special tax deals negotiated by PwC.

The Australian entity's 2018 financial statements report that Accenture Australia group of companies provide "IT Management Consulting and Outsourcing services in Australia" and that "Accenture Australia Holdings Pty Ltd also serves as the operating entity for certain Government contracts." The company reported profit of \$55 million in 2018, down from \$56 million in 2017. Total revenue was \$2.120 billion in 2018, up from \$1.807 billion in 2017.

Accenture's taxable profits are reduced in Australia by a plethora of large offshore related party transactions with limited disclosure. In 2018, these included:

- \$576.2 million for the purchase of consulting services
- \$156.1 million in royalty expense
- \$155.1 million in payables outstanding
- \$96.8 million in international service expense
- \$56.6 million in proceeds of borrowings
- \$11.8 million in interest expense
- \$8.7 million in repayment of borrowings
- \$8.0 million in other service agreement expense



Collectively, these offshore related party costs totalled over \$1.061 billion and are nearly half of the \$2.120 billion in revenue. The pre-tax profits of \$77.6 million and income tax expense of \$22.6 million declared in Australia are minimal in comparison to these offshore related party payments. Offshore related party transactions are the most common scheme for multinationals to shift profits out of Australia to avoid paying Australian corporate income taxes. In this case, the tax payments avoided may have been generated from profits earned at least in part from federal government contracts.

The finance payments may be in relation to a loan of \$347.8 million to Accenture Finance Limited in Ireland. In 2017 this Irish company, with a book value of €30.9 billion, was owned by Accenture International S.a.r.l. in Luxembourg. This Luxembourg company has since been transferred to Accenture International BV in the Netherlands and is part of the ownership structure of the Australian business.

Accenture's New Zealand filings provide more details on offshore related party transactions than Australian filings. The 2018 annual financial statements of Accenture NZ Limited reveal that royalty charges are paid to Accenture Global Services Ltd in Ireland and that international service expense "is coordinated and settled through Accenture Participation BV" in the Netherlands.

The 2018 financial statements for Accenture Australia Holdings Pty Ltd report previous share issues and repayment of debt to the previous "parent company Accenture Australia APS." In 2009 all shares in the Australian entity "were transferred for a total of \$1,024,000,000 to Accenture Australia Holding BV." (p.29) It appears that this was part of the broader global restructure moving incorporation from Bermuda to Ireland.

Accenture Australia Holdings ApS was a Danish company; its 2009 financial statements report that it was owned by Accenture International SARL in Luxembourg and the ultimate parent company was Accenture Ltd in Bermuda. The previous Accenture Australia corporate structure, also referred to in the notes of Accenture Australia Holdings Pty Ltd's 2018 financial statements, involved 4 companies incorporated in Bermuda, Accenture Australia Ltd., Accenture Australia (1) Ltd., Accenture Australia (2) Ltd. and Accenture Australia (3) Ltd.

While Accenture's move from Bermuda to Ireland may have helped with public relations, the continued use of Ireland – and a range of other tax havens – clearly demonstrates ongoing aggressive tax avoidance practices in Australia and globally.

## **Oracle**

Oracle, a giant US publicly-traded tech giant, has an extensive global record of tax avoidance and continues to rely on the use of tax havens and transfer pricing to reduce corporate tax payments in Australia and globally. Oracle has received at least \$1.3 billion in Australian federal contracts, including \$81.6 million in 2020 and \$101 million in 2019. In 2020, Oracle ranked as the 73<sup>rd</sup> largest federal contractor.

Globally, Oracle reported operating margins of 34% a year from 2016-2018. However, Australian margins averaged less than 2.5% over 5 years (2013/14-2017/18). These significant and consistent gaps are a strong indication of profit shifting to reduce taxable income in Australia. In 2018, Oracle's \$773 million in related-party transactions may have facilitated



shifting profits out of Australia. Oracle has been disputing an additional assessment of over \$300 million with the ATO. This transfer pricing dispute appears to be one of the ATO's largest cases since the landmark Chevron case and may represent \$1 billion in profits shifted out of Australia.

In early 2021, it was reported that the New Zealand tax authority alleged that Oracle underpaid more NZ\$20.3 million in tax between 2012 and 2015, "by overpaying for services supplied by its overseas parent".<sup>17</sup> It is also worth noting recent transfer pricing cases in New Zealand with other US based tech giants. In 2019 **Microsoft** New Zealand paid nearly NZ\$25 million in back taxes over its transfer pricing practices and **Cisco Systems** paid \$4.6 million in back taxes in 2020 after an audit of its transfer pricing practices.<sup>18</sup>

Oracle's Australian business, as is with all the multinational's operations outside of the US, is owned through a complex web of Irish companies. *The top-level Irish holding company is a non-resident Irish company registered in the Isle of Man and not subject to any income tax.* This non-resident Irish company paid no income tax on reported profits of US\$5.6 billion and US\$8.6 billion in 2018 and 2017, respectively, compared to global net income of US\$3.8 billion and US\$9.3 billion.

In 2013, Oracle paid €11m in Irish income tax on revenues reported in Ireland of €7.24 billion. This was 27% of Oracle's global revenue, but tax was only due on Irish profits of €164.4 million. The same global corporate structures appear to still be intact and highly effective at aggressively avoiding corporate income tax in Australia and around the world. In 2017, prior to Trump's US tax cuts, Oracle held US\$58.3 billion in offshore accounts amounting to 87.1% of total cash holdings.<sup>19</sup> Oracle ranked 5<sup>th</sup> on the list and was only outranked by other US tech giants, **Apple** (\$246B), **Microsoft** (\$132.1B), **Cisco Systems** (\$67.5B) and **Alphabet** (f/k/a **Google**; \$60.5B). Several other US tech giants (**Qualcomm**, **Intel**, **Facebook**, **Amazon**, etc...) also ranked high on the list with billions stashed in offshore accounts.

An analysis of ASIC filings indicates that Oracle Corporation Australia Pty Ltd, the primary Australian operating company, is owned through complex corporate chain leading to Ireland. The primary Australian operating company is directly owned by Oracle Holdings Australia Pty Ltd which is owned by Oracle Consolidation Australia Pty Ltd which is owned by OCAPAC NIH1 Company UC (Unlimited Company) in Ireland. This Irish company is owned by ORACLE CAPAC SERVICES UC in Ireland and ORACLE OTC HOLDINGS GENERAL PARTNERSHIP in Delaware. Delaware is widely recognised as a tax haven. Limited information is available on Delaware companies, even less on general partnerships.

ORACLE CAPAC SERVICES UC has one share owned by the same Delaware general partnership and the remainder of shares held by Oracle Global Partners, an Irish general partnership that does not file financial statements. The address of Oracle Global Partners is 70 Sir John Rogerson's Quay in Dublin, Ireland. Several other Oracle holding companies registered at the same Dublin address, like this one, are non-resident Irish companies registered in the Isle of Man. The Dublin address, different from the Oracle subsidiaries with genuine operations in Ireland, is the location of the International Financial Services Centre. Hundreds of companies are registered at this address. It is also the address of Matheson, an Irish law firm that specializes in helping US multinationals, particularly tech and pharmaceutical giants, avoid global corporate income tax.



Oracle CAPAC Service UC, the indirect owner of the primary Australian entities, directly owns Oracle New Zealand. The 2018 filings from Oracle New Zealand show a different ownership structure than the Irish filing and contain more details than the Australian filing. The New Zealand filing explains that its immediate parent, Oracle CAPAC Service UC, “is held by OCAPAC Holding Company UC (non-resident Ireland); which in turn is held by Oracle International Corporation (U.S.); which in turn is held by Oracle Global Holdings, Inc. (U.S.); which in turn is held by Oracle Systems Corporation (U.S.), which in turn is held by Oracle Corporation (U.S.)”.

The New Zealand filing contains more information on offshore related party transactions than the Australian filings. The NZ company reported NZ\$132 million in revenue and \$103 million for the cost of products sold. Purchases from offshore related parties made up 99.6% of the cost of products sold. The company states that “the majority of related party transactions were with Oracle CAPAC Services” the parent company and “include sub-license fee and hardware support fees, trading of goods and services, interest charges and purchase accounting entries.” The filings note that the “Group remains in discussions with the IRD [NZ tax authority] in respect of historic treatment of transfer pricing.”

Despite having thousands of global subsidiaries, Oracle’s 2018 annual report (10-K) filed with the US Securities & Exchange Commission lists only 9 subsidiaries, 5 in Ireland and 3 in Delaware and 1 in California. OCAPAC Holding Company UC is one of the 5 Irish companies disclosed in Oracle’s SEC filing. According to a search of the company register in the Isle of Man, all 5 of the disclosed Irish companies are non-resident Irish companies. These companies are incorporated in Ireland but registered in the Isle of Man and not subject to any income tax, including the 12.5% tax rate for Irish companies.

The 2018 financial statements from Ireland do not mention the Isle of Man registration but state that the company’s “accounting records are maintained at 31-37 North Quay, Douglas, IM1 4LB, Isle of Man....” The company has no employees and states that it “has no tax liability in Ireland or any other jurisdiction.”

One level below the OCAPAC Holding Company UC, and one level above the direct Irish owner of the Australian business, is Oracle CAPAC Services UC in Ireland. According to the 2018 financial statements, the principal activity of Oracle CAPAC Service UC is the “earning of sub-license fees from other Oracle group companies upon the distribution and sale of computer software and hardware products and the provision of services in Canada, Latin American, Japan and Asia Pacific regions.” The Company operates a branch in Singapore with a principal activity of providing consulting, training and support services to Japan and Asia Pacific regions.”

Oracle CAPAC Services UC directly held 100% of Oracle New Zealand and NetSuite Australia Pty Ltd, Moat APAC Pty Ltd, Dyn AU PTY Limited in Australia. Other Australian companies are held indirectly, including many “Dormant” companies. The company also indirectly owns Oracle Singapore Holdings Pte Limited in Singapore.

The direct Irish owner of the top Australian company, OCAPAC NIH1 Company UC, reported no dividend income or other economic activity in the 2018 financial year and recorded a loss of US\$36.4 million in 2017. The company’s entire 2017 income was from a dividend of US\$265.3 million “from the Company’s wholly owned subsidiary, Oracle Consolidation Australia Pty Limited, which was subsequently paid directly to the Company’s immediate





parent, Oracle CAPAC Services Unlimited Company.” No tax was paid in 2017 or 2018. Other than the ownership of the Australian company, and its subsidiaries, the only other subsidiary of this Irish company was Oracle Systems Pakistan (Private) Limited in Pakistan.

According to the financial statements of Oracle Corporation Australia Pty Ltd, the primary operating company in Australia, revenue was \$1.119 billion, but the loss before income tax was \$3.7 million and income tax expense of \$4.5 million drove net loss down to \$8.2 million. The cash flow statement shows income taxes paid of under \$2.3 million.

Losses on Australian operations appear to have been driven by large offshore related party transactions for which there is very limited disclosure. The cost of products, not including other expenses that were with related parties, was \$454.4 million. Related party transactions totalled over \$773.2 million, including \$478.1 million in “Sub-license fee and hardware support fee”. This did not include an outstanding balance due at the end of the reporting period of \$196.7 million to OCAPAC Service Ireland.

The head of Oracle’s tax consolidated group in Australia is an entity called Vantive Australia Pty Ltd. ASIC records show this entity is directly owned by Oracle Systems Corporation. While the address provided is the Oracle corporate headquarters in California, this entity is incorporated in Delaware. It is not clear why this entity has a separate ownership structure, but limited tax payments in Australia could possibly be used to generate foreign tax credits to offset US income tax payments. The ATO 2018-19 corporate tax data show total income for Vantive of \$1.443 billion, but zero in taxable income and zero in income tax paid.

The notes to the 2018 financial statements of Oracle Consolidation Australia Pty Ltd report current liabilities of \$136.7 million, which includes a \$90 million loan payable to OCAPAC Research Company in Ireland. Cumulative interest payable on the loan, “repayable on demand”, to the non-resident Irish company registered in the Isle of Man was \$46.5 million.

The only mention of Australia in Oracle’s 2018 annual report (10-K) is related to audits by tax authorities. The filing states that Oracle is “under audit by the IRS and various other domestic and foreign tax authorities with regards to income tax and indirect tax matters and are involved in various challenges and litigation in a number of countries, including, in particular, Australia, Brazil, Canada, India, Indonesia, Korea, Mexico, Spain and the United Kingdom, where the amounts under controversy are significant.”

The most significant issues being examined by federal and state tax authorities in the US include “deductibility of certain royalty payments, transfer pricing, extraterritorial income exemptions, domestic production activity, foreign tax credits, and research and development credits taken.” The annual report also states that “intercompany transfer pricing has been and is currently being reviewed by the IRS and by foreign tax jurisdictions and will likely be subject to additional audits in the future. ... In recent periods, transfer pricing audits in many foreign jurisdictions have become increasingly contentious. ...our provision for income taxes could be adversely affected by shifts of earnings from jurisdictions or regimes that have relatively lower statutory tax rates to those in which the rates are relatively higher.”

In 2017, the Korean government imposed a charge of US\$276 million for alleged tax evasion after conducting a tax audit of the company for four months from July 2014. The audit found that US\$272 million of taxes over 7 years had been evaded “by taking advantage of a tax haven



abroad.” Software licence fees were sent to Ireland, presumably through the same structures that own both the Australian and Korean businesses.

The 2018 financial statements for Oracle Corporation Australia Pty Ltd report that in May 2018, “the head of the Australian tax consolidate[d] group of which the Company is a member was issued amended income tax assessments (totalling \$306.2m in primary tax, withholding tax, penalties and interest) by the Australian Taxation Office (ATO) regarding historic treatment of certain transfer pricing positions. In accordance with ATO practice, the Company entered into a payment arrangement and made a partial payment (consisting of \$137.4m) for these amended income tax assessments in June 2018.” The company has contested the amended assessments “and remains in dialogue with the ATO....”

Given that the tax dispute is over \$300 million, with the tax rate of 30% the dispute may involve the profit shifting of over \$1 billion. This appears to be the largest transfer pricing scheme in Australia since the ATO’s landmark federal court victory against Chevron. However, despite the ongoing dispute with the ATO and a clear track record of global tax avoidance Oracle continues to be rewarded with large federal IT contracts.

## **SAP**

SAP is a German-based IT multinational corporation. It reported a consolidated profit before tax of €5.6 billion in 2018 on global revenue of €24.7 billion. It has had federal contracts from the Australian government worth nearly \$1.5 billion. In 2020 SAP received over \$125 million in contracts and ranked as the 52<sup>nd</sup> largest federal contractor. The most recent ATO tax transparency data shows that in 2018-2019, SAP had \$1.164 billion in total revenue in Australia, but had zero taxable income and paid nothing in corporate income tax. In 2017-2018, SAP had a total revenue of \$1.05 billion but no corporate income tax in Australia.

SAP Australia Pty Ltd is a direct subsidiary of the Germany parent company, SAP SE. The 2018 Annual Report lodged with ASIC shows that the Australian subsidiary registered an operating loss of \$28 million on revenue of \$1.16 billion in 2018 and an operating loss of \$85 million on revenue of \$1.05 billion in 2017. Why is it that SAP’s global operations are highly profitable, but the Australian operations appear to lose money? Is the company engaging in profit shifting through offshore related party transactions?

Related party transactions accounted for 23% of revenue, and for 55% of operating expenses for SAP Australia Pty Ltd in 2018. The company paid royalties and expenses to offshore entities of \$434.2 million, of which \$399.3 million was to the German parent company. It purchased \$30.6 million in services from its parent company, and \$42.4 million from other related entities. The Australian SAP entity reported \$117.5 million as ‘other expenses’, of which \$69.3 million was paid to the parent and \$48.2 million to other related entities. The company paid a dividend of \$997,840 to the parent company which also charged the Australian subsidiary over \$1.1 million as an “interest expense on late royalty payments”. This \$1.1 million appears to be a particularly egregious case of profit shifting.

Despite losses, the Australian company paid \$1.2 million in income tax in 2018 and \$4.5 million in 2018. With no explanation, the company reported a “write-off of deferred tax assets” of over \$60 million in 2017. This write-off and tax payments while reporting losses are most likely due to settlements over previous years with the ATO.



Intercompany offshore payments may allow SAP to artificially reduce or eliminate taxable profits in Australia. Profits may be shifted offshore where they are subject to lower tax rates. While the Australian accounts indicate large payments to the German parent, it is possible that those payments may actually be transferred to other jurisdictions with lower tax rates or no tax on royalty or interest payments. Other German multinationals have been found to have “branches” in Panama or other tax haven jurisdictions that can conduct business on behalf of the German parent entity.

A 2013 [Reuters](#) examination of SAP accounts found that the company, using techniques similar to those deployed by US tech giants, reduced its global tax bill by more than €100 million. Twenty percent of global profits were shifted to Ireland, which accounted for less than 1% of sales and employees. The transfer was done through related party offshore loans at high interest rates, payments for intellectual property and other forms of transfer pricing.

It appears that these practices are continuing through SAP Ireland US-Financial Services Designated Activity Company, one of many Irish subsidiaries. The 2018 annual report of this company shows pre-tax profits of US\$1.59 billion, including US\$563 million in interest income from related parties and more than US\$1 billion gain from the sale of a subsidiary to another related party. The company paid dividends to its immediate parent company, another Irish entity, of US\$2.9 billion. The company, with 3 employees, “is engaged in supporting the activities of the SAP group by providing treasury service and US dollar financing to SAP group companies.” The company reported an effective tax rate of 4.13%, significantly below the already low 12.5% corporate tax rate in Ireland. The reduced tax rate was due to “Exchange rate differences”. It had loans of over US\$7.3 billion to related parties.

SAP’s 2018 Annual Report states that it is in dispute with a number of tax authorities around the world, including Germany and Brazil. The latter is litigating around the deductibility of intercompany royalty payments and intercompany services and is seeking €95 million in unpaid tax. German authorities meanwhile are pursuing SAP SE for €1.75 billion, including penalties of €842 million, over the company’s financing structure.

### **Amazon**

Amazon Web Services is a smaller and more recent federal government IT contractor, but provides another example of federal contractors being rewarded with new contracts despite an extensive record of [Australian and global tax avoidance](#).

In 2019, Amazon Web Services (AWS) received a \$39 million federal contract for cloud computing services through a “limited tender” by the government’s Digital Transformation Agency.<sup>20</sup> Amazon Web Services has also been hired to run the 2021 census after IBM’s 2016 failure.<sup>21</sup> In April 2020, the federal government controversially awarded Amazon with the contract to host data for the failed COVID-19 tracing app. It was reported at the time that “the tender was a limited, invitation-only opportunity initially run by the Department of Home Affairs”.<sup>22</sup> Insiders in the “Government’s Digital Transformation Agency voiced concerns about awarding of the contract to an overseas provider when several wholly Australian-owned cloud storage services had been vetted....”<sup>23</sup>

It appears that these federal government contracts were not signed with any of Amazon’s Australian companies, but directly with Amazon Web Services, Inc. in the US. The address of



this major Amazon subsidiary, like the parent company, is in Seattle, Washington, but both are incorporated in Delaware.

The pattern of Amazon's business model in Australia is that payments are made directly to offshore entities and some portion of that payment returns to Australian subsidiaries that actually provide services in Australia. Why would the federal government enter into a contract with a Delaware subsidiary when Amazon has a Web Services business incorporated in Australia? Has Amazon Web Services, Inc., or any other Amazon affiliated companies, obtain a statement of tax record from the ATO, as required, in order to obtain federal contracts?

In 2018-2019, according to the ATO corporate tax data, Amazon Web Services Australia Pty Ltd had nearly \$319 million in total revenue, but only \$34 million in taxable income and paid \$10 million in corporate income tax. Amazon's total revenue was likely artificially reduced in Australia through contracts, like those with the federal government, where full payments are immediately sent offshore and only part of the revenue is returned to the Australian entity that is actually on the ground and providing the services.

The IRS pursued Amazon in US courts for major tax avoidance through transfer pricing on royalty payments on intellectual property rights held by Luxembourg subsidiaries, but the court ruled in Amazon's favour. In 2018, Amazon made profits of over US\$11 billion, but paid zero income tax in the US. In 2019, Amazon paid a very small amount of tax in the US.

The European Court of Justice has ruled that Amazon, using Luxembourg structures, avoided €250 million in European income taxes between 2006 and 2014. Amazon has appealed this decision. Luxembourg is critical to Amazon's global tax schemes and the tech giant has at least 10 companies incorporated there. Amazon subsidiaries in Luxembourg charge fees to Amazon companies operating in Australia and globally to artificially reduce profits where they are genuinely earned.

## **Dell**

Dell Australia Pty Ltd was the 38<sup>th</sup> largest federal contractor in 2020 and was awarded \$161 million in contracts. Dell has received over \$1.1 billion in federal contracts. According to the 2018-2019 ATO corporate tax data, Dell had revenues of \$296.6 million, but taxable income of only \$61.1 million and paid corporate income tax of only \$18.1 million.

Dell is a US based IT multinational with its operations outside of North America, including Australia, all held through Ireland. A \$23 billion leveraged buyout of Dell in 2013 was labelled as a "Gigantic Tax Dodge".<sup>24</sup> Dell's global tax dodging appears to be ongoing. In the financial year ending in early 2019, Dell's Irish holding company recorded pre-tax profits of US\$186.4 million, after a dividend payment of US\$51.3 million (US\$622.7 m in 2018).<sup>25</sup> The holding company, EMC International Company, is "the owner of certain intellectual rights which it develops and licences to other EMC group companies."<sup>26</sup> It is these types of arrangements that allow multinationals to shift profits out of Australia and other jurisdictions to avoid income tax where profits are actually earned.

The Irish holding company "is a private unlimited company incorporated in Ireland", but the "administrative office for the company is located in Bermuda. The company's corporation tax bill was zero and a note attached to the accounts states the company is not subject to Irish corporation tax as it is a non-Irish tax resident company."<sup>27</sup>



## Conclusion & Recommendations

The evidence provided in this submission supports the recommendation that – to the extent possible – IT capacity should be built within the APS and the reliance on external contractors should be reduced. Obviously, some IT contractors will continue to be required and a strong preference for domestic companies that are committed to technology transfer to the APS should be supported. As the government has recognised, there is a huge opportunity with federal IT contracting to boost innovation in Australia’s economy and support domestic business, job creation and increase corporate income tax revenue to fund public services.

Any future IT contracts awarded to multinational companies should, at a minimum, require those corporations to produce a copy of reporting under the [Global Reporting Initiative \(GRI\) Tax Standard](#) or implement the tax reporting standard within one year. These GRI standards, which have the support of investors holding over US\$10 trillion in assets under management, include public Country by Country Reporting (CbCR) on tax payments to governments and are an improvement over the current OECD CbCR standards, which are not public.

Implementation of the GRI Tax Standard does not pose a reporting burden as large multinationals are already required to report country by country tax payments to the ATO and other tax authorities under the OECD’s Base Erosion & Profit Shifting (BEPS) Action Plan. However, current CbCR reporting is not accessible outside of the ATO not available to help inform procurement decisions. It is worth noting that the European Union voted this week to require public CbCR for all large multinationals, which is “designed to shine a light on how some of the world’s biggest companies – such as Apple, Facebook and Google – avoid paying an estimated [US]\$500bn (£358bn) a year in taxes by shifting their profits...”<sup>28</sup>

In addition to requiring implementation of GRI tax reporting standard as a condition of receiving federal contracts, Australia should consider implementation of broader tax reforms designed to effectively address aggressive tax dodging by global tech giants. In the absence of multilateral action, dozens of countries have implemented digital service taxes (DSTs) which tax a small percentage of revenue from certain transactions of global tech giants. These DSTs, while popular across the political spectrum, are not particularly effective in generating revenue or addressing the underlying problem of profit shifting through transfer pricing.

Current global tax rules allow for large scale transfer pricing as the predominance of transactions are between the subsidiaries of the same multinational in different jurisdictions. As the cases above demonstrate, it is particularly easy for tech companies to take advantage of intellectual property rights and other intangible assets to shift profits from where they are genuinely earned to where they are taxed the least, or not taxed at all. While multilateral solutions are ultimately required, they are unlikely to achieve meaningful reforms in the short-term.

Australia – and other countries – should consider unilateral action to tax tech giants on global profits and to collect a portion of tax revenue based on genuine economic activity within Australia. This type of “unitary” tax would eliminate the harmful impact of profit shifting through transfer pricing and is part of the current OECD global tax reform discussions. However, the OECD is currently only considering a “unitary” approach on so-called residual profits. Within the United States, state governments already use a system of apportionment to collect state corporate income tax based on total profits, regardless of whether those profits have been shifted to states with lower tax rates.



The proposal for a digital profits tax, has been developed with Public Service International (PSI) through extensive dialogue with global tax experts. Additional details and explanation can be found in this [CICTAR Digital Profits Tax Brief](#). Ultimately, now is the time to ensure that global tech giants – one of the few sectors to increase profits under a global pandemic – are helping to fund economic recovery. Profits and tax revenue from other sectors and from individuals may take years to recover.

The federal government needs to have much greater transparency on all contracts and relationships with all corporations and other service providers. All contracts over a certain threshold should be made public, unless there are compelling national security interests for not disclosing contracts. In those limited circumstances an explanation of the nature of the contract should be provided. If corporations claim that elements of a contract contain confidential information, then limited portions of the contract could be redacted. This information could be provided through [AusTender](#) website which should also be improved to provide existing contract information in ways that are more transparent and easier to analyse.

Legislation introduced as a result of the Black Economy taskforce did implement new requirements for federal government contractors. As of July 2019, contracts valued over \$4 million now require the contractor to provide a [Statement of Tax Record](#) from the ATO. While the intent of the law is commendable, it has proven ineffective. As one example, Oracle – a multinational corporation with a \$300 million tax dispute with the ATO – has continued to receive dozens of new federal contracts. The implementing legislation required an annual review, but it appears that Parliament has yet to review this policy and make recommendations for improvements. In Treasury’s own words, “Businesses who do not meet their tax obligations have an unfair advantage over honest businesses that do.”<sup>29</sup>

The federal government has a major opportunity to use procurement of IT contracts to increase transparency, encourage responsible corporate behaviour, level the playing field and ensure that tax dodging corporations are not rewarded with federal contracts. Ensuring that global tech giants pay the taxes they should is the best way to help fund Australia’s economic recovery from the global pandemic. The time for reform is now.



## Appendix 1

The following table is based on the AusTender materials released by the Department of Finance and presented through an independent website which makes it possible to analyse the data.<sup>30</sup> The starting point of the data was the 100 largest suppliers to the federal government in 2020, ranked by total contract value in 2020. This year was chosen as the most recent year in which there may be complete data. The analysis is only as accurate as the underlying data, which is not completely reliable. There are significant weaknesses in the AusTender reporting. Suppliers were that were obviously IT companies or had significant contracts in 2020 involving IT related work. The second column “Position” represents the rank in the list of top 100 suppliers. The final column represents the value, in millions, of all contracts recorded under that name in the AusTender system. Companies names are not consistent in the data and frequently do not include other company names or variations under the same corporate or partnership structures. One obvious example below is Pricewaterhousecoopers, many other partnerships in the PwC structure would have additional federal contracts in 2020 and in other years. Other than the Digital Transformation Agency, which is part of the federal government, there are only 4 companies which are ultimately Australian owned. The Australian companies are highlighted in yellow. All of the other suppliers are subsidiaries of foreign based multinationals.

### Largest Federal IT Contractors in 2020

			2020		Total Contract
	Position	Supplier Name	Contract Value	Note	Value (\$mil)
1	9	Datacom Systems (AU) Pty Ltd	\$533,822,211	all IT related	\$1,616
2	15	HAYS Specialist Recruitment (aust) P/L	\$294,800,717	not all IT	\$2,041
3	18	IBM Australia Ltd	\$250,482,240	all IT related	\$9,361
4	20	Optus Networks Pty Limited	\$243,925,334	all IT related	2,573
5	22	Fujitsu Australia Limited	\$238,063,018	all IT related	\$2,605
6	23	COBS Telstra	\$237,868,526	IT and phone	\$13,594
7	30	KPMG	\$190,024,124	includes IT	\$1,950
8	33	Data 3 Group	\$182,434,896	all IT related	\$2,657
9	35	Deloitte Touche Tohmatsu	\$175,271,751	includes IT	\$982
10	36	Leidos Australia Pty Ltd	\$170,590,591	all IT related	\$3,193
11	37	Accenture Australia Pty Ltd	\$170,328,610	mostly IT	\$1,112
12	38	DELL Australia Pty Limited	\$161,218,232	all IT related	\$1,144
13	42	NTT Australia Pty Ltd	\$148,179,842	all IT related	\$1,463
14	43	Infosys Technologies Limited	\$147,471,652	all IT related	\$218
15	52	SAP Australia Pty Ltd	\$125,309,223	all IT related	\$1,494
16	53	Pricewaterhousecoopers Consulting (australia) Pty Ltd	\$117,260,751	mostly IT	\$355
17	57	Hewlett Packard Australia Ltd	\$106,524,884	all IT related	\$1,322
18	63	Canberra Data Centres Pty Ltd	\$96,710,275	all IT related	\$810
19	66	Datacom Connect Pty Ltd	\$86,748,731	call centres	\$930
20	68	Talent International (act) Pty Ltd	\$86,091,115	IT staffing	\$897
21	73	Oracle Corporation Australia Pty Ltd	\$81,630,244	all IT related	\$1,303
22	74	Digital Transformation Agency	\$81,131,123	govt agency	\$316
23	76	DXC Technology Australia Pty Ltd	\$80,714,298	mostly IT	\$2,264
24	77	Modis Staffing Pty Ltd (Adecco)	\$79,953,876	IT staffing	\$698
25	78	Verizon Australia Pty Ltd	\$79,509,294	all IT related	\$478
26	89	Ernst & Young	\$71,683,632	includes IT	\$979
27	93	Ranstad Pty Ltd	\$67,743,822	includes IT	\$333
28	96	APIS Group Pty Limited (Accenture)	\$66,270,313	mostly IT	\$305
		<b>TOTAL</b>	<b>\$4,371,763,325</b>		<b>\$56,993</b>



## ENDNOTES

- <sup>1</sup> <https://www.smh.com.au/public-service/tech-giants-to-lose-900-million-in-aps-work-20170320-gv1ru2.html>
- <sup>2</sup> Ibid.
- <sup>3</sup> Ibid.
- <sup>4</sup> <https://www.themandarin.com.au/128244-visa-privatisation-plan-scrapped-with-new-approach-to-tackle-emerging-global-threats/>
- <sup>5</sup> <https://contracts.disclosurelo.gs/displaySupplier.php?supplier=86082618148-Stellar%20Asia%20Pacific%20Pty%20Ltd>
- <sup>6</sup> As one example, Concentrix, a subsidiary of a US multinational, was awarded Centrelink contracts after major failures on similar UK contracts. (<https://www.abc.net.au/news/2018-12-06/centrelink-contractor-concentrix-cut-thousands-off-welfare-in-uk/10586274>)
- <sup>7</sup> <https://www.theaustralian.com.au/nation/politics/130m-spent-on-welfare-robodebt-oversight/news-story/ec71e1470c9c14cccf5d2e5930f99c49>
- <sup>8</sup> <https://www.ato.gov.au/Business/Large-business/In-detail/Tax-transparency/Corporate-tax-transparency-report-for-the-2018-19-income-year/>
- <sup>9</sup> <https://www.itnews.com.au/news/ato-reveals-the-it-giants-that-paid-zero-tax-last-year-558893>
- <sup>10</sup> <https://www.smh.com.au/technology/queensland-health-payroll-fail-government-ordered-to-pay-ibm-costs-20160404-gnxpgj.html>
- <sup>11</sup> [https://www.abc.net.au/news/2016-11-25/ibm-to-pay-over-\\$30m-in-compensation-for-census-fail/8057240](https://www.abc.net.au/news/2016-11-25/ibm-to-pay-over-$30m-in-compensation-for-census-fail/8057240)
- <sup>12</sup> <https://www.afr.com/politics/experts-question-1b-show-of-faith-in-ibm-after-census-fail-20180705-h129me>
- <sup>13</sup> <https://www-03.ibm.com/press/au/en/pressrelease/54124.wss>
- <sup>14</sup> <https://www.zdnet.com/article/ibm-scores-au107m-australian-taxation-office-sbr-contract/>
- <sup>15</sup> Ibid.
- <sup>16</sup> <https://contracts.disclosurelo.gs/displaySupplier.php?supplier=61096995649-ACCENTURE%20AUSTRALIA%20HOLDINGS> This number differs from the 2020 analysis as the Accenture name in the 2020 list is different from this listing.
- <sup>17</sup> <https://www.stuff.co.nz/business/123880724/software-giant-oracle-disputes-20m-nz-tax-bill>
- <sup>18</sup> Ibid.
- <sup>19</sup> <https://www.bloomberg.com/graphics/2017-overseas-profits-tax/>
- <sup>20</sup> <https://www.afr.com/technology/government-signs-on-with-amazon-in-39m-cloud-computing-deal-20190627-p521on>
- <sup>21</sup> Ibid.
- <sup>22</sup> <https://www.abc.net.au/news/2020-04-24/amazon-to-provide-cloud-services-for-coronavirus-tracing-app/12176682>
- <sup>23</sup> Ibid.
- <sup>24</sup> <https://slate.com/business/2013/02/dell-goes-private-leveraged-buyout-will-help-dell-pay-investors-while-minimizing-taxes.html>
- <sup>25</sup> <https://www.irishtimes.com/business/economy/dell-emc-holding-company-posts-pretax-profit-of-186-4m-1.4154403>
- <sup>26</sup> Ibid.
- <sup>27</sup> Ibid.
- <sup>28</sup> <https://www.theguardian.com/world/2021/feb/26/eu-states-back-plan-to-expose-big-companies-tax-avoidance>
- <sup>29</sup> <https://treasury.gov.au/review/black-economy-taskforce/consultation>
- <sup>30</sup> <https://contracts.disclosurelo.gs/displaySupplier.php?year=2020>