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23 February 2015

Committee Secretariat
Senate Standing Committee on Economics
PO Box 1600
Parliament House
Canberra ACT 2600

[By email: economics.sen@aph.gov.au]

Dear Sir/Madam

Submission to the Senate Inquiry into Corporate Tax Avoidance

We refer to your email of 27 October 2014 inviting IBM Australia to make a submission to the Senate Economics References Committee's (the Committee) inquiry into corporate tax avoidance and minimisation (the Inquiry).

Please find enclosed IBM Australia's submission. We trust that the submission will assist the Committee in its Inquiry.

Should you have any queries or would like to discuss this submission further, please contact Robert Zizic.

Yours sincerely

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Dear Sir/Madam

Submission to the Senate Inquiry into Corporate Tax Avoidance

IBM Australia Limited (on behalf of the IBM tax consolidated group in Australia) welcomes the opportunity to make a submission to the Senate Economics References Committee's inquiry into corporate tax avoidance and minimisation.

Tax practices of IBM in Australia

IBM Australia has a demonstrated commitment to compliance with Australian tax laws and in acknowledgement of its position as a large taxpayer in Australia, conducts its tax affairs with the Australian Taxation Office (ATO) in an open and transparent manner. IBM Australia implements that commitment through reliance on existing ATO programs designed to minimize tax disputes and encourage transparency. In IBM Australia's view, experience with these programs has been positive, and effective in fostering a continuing relationship of transparency with the ATO while providing certainty to IBM Australia.

IBM Australia commitment to open and transparent interaction with the ATO

IBM Australia has entered into an Advanced Pricing Agreement ("APA") with the ATO. An APA is a transfer pricing program whereby the ATO and taxpayer work collaboratively and agree on the economic profits from related party transactions undertaken by the taxpayer. In addition, during the past ten years, IBM Australia has also sought and received several rulings from the ATO. These rulings provide confirmation to the ATO that the taxpayer is correctly applying the law, minimising the risk of the taxpayer adopting an incorrect position. Further, during 2012 IBM Australia voluntarily approached the ATO to ensure it correctly recognised income received for tax purposes. IBM Australia took pre-emptive steps to discuss the matter with the ATO, so they could work together to resolve any concerns. In part as a result of IBM Australia's engagement with the ATO, a public Taxation Ruling was issued by the ATO, which clarified long standing uncertainty in the Australian tax law.

Paying its fair share of Australian taxes

Over the last five completed income years (2010 to 2014 inclusive), IBM Australia has had an average effective tax rate of 27%, which approximates Australia's corporate income tax rate of 30%. IBM Australia has calculated its effective tax rate based upon the quotient of income tax paid and accounting profit before tax. The difference in IBM Australia's stated effective tax rate and the statutory tax rate principally relates to IBM's compliance with statutory provisions for recognition of income and deductions for tax purposes (the numerator in the effective tax rate formula), which often differ from accounting concepts of revenue and expenses (the denominator in the effective tax rate formula). In the case of IBM Australia, these differences are mainly represented by timing differences and the Research & Development tax incentive offset.



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IBM Australia's demonstrated history of being a low risk taxpayer

i. No adverse findings during routine ATO compliance activity

As part of its regular compliance activities, during 2008 and 2011 the ATO conducted two comprehensive reviews of IBM Australia's income tax affairs for the years ended 30 June 2005 to 30 June 2007 and 30 June 2008 to 30 June 2011 respectively. The reviews involved detailed examinations of IBM Australia's tax affairs, including its related party dealings. The ATO concluded that IBM Australia was properly meeting its Australian tax obligations and the reviews did not result in any adjustments to IBM Australia's tax liability.

ii. Risk Differentiation Framework rating

In recent years, IBM Australia has received favourable "key taxpayer" risk ratings for both income tax and GST under the ATO's risk-differentiation framework ("RDF"). The RDF is a compliance tool used by the ATO to categorise corporate taxpayers which determines how the ATO engages with the taxpayer and the types of compliance measures which may be used by the ATO. The key taxpayer risk rating IBM Australia maintains with the ATO means the Commissioner views IBM in the lowest possible category of risk for large consequence business taxpayers.

The ATO has acknowledged IBM Australia's ongoing commitment to compliance in a recent RDF annual risk rating letter, stating that:

'IBM has clearly demonstrated a willingness to maintain open and cooperative interactions with us. We appreciate the efforts of your staff and their genuine desire to work with us and we look forward to a continuation of this strong relationship.'

The ATO has further noted:

'Your commitment to a cooperative compliance relationship is one we seek to have with all large business. The cooperative nature of our relationship helps to limit the consequence and impact on your business and the tax system of any potential risks that may arise.'

IBM's favourable rating allows IBM Australia to work with the ATO to actively ensure it meets its tax obligations and demonstrates the positive, open and transparent manner in which IBM interacts with the ATO.

iii. Participation in the ATO's Pre-lodgement Compliance Review program

IBM Australia has participated in the ATO's pre-lodgement compliance review (PCR) program. As part of a PCR, the ATO and the taxpayer review and discuss the taxpayer's tax affairs for the year prior to its tax return being lodged. This allows each party to identify any areas of risk in real time and resolve any potential differences of opinion at the earliest opportunity. In acknowledgement of IBM Australia's demonstrated commitment to compliance, favourable risk rating and its proactive engagement with the ATO, the ATO has confirmed that IBM Australia is no longer required to participate in the PCR program.

iv. Membership of the ATO's Large Business Liaison Group

IBM Australia has been a member of the ATO's Large Business Liaison Group (LBLG) (formerly the Large Business Advisory Group), the ATO's peak consultative forum with large



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corporates, since November 2011.

This appointment reflects IBM Australia's positive interaction with the ATO in a cooperative and open manner and its position as a market leader in the IT services industry.

As outlined above, IBM Australia has implemented appropriate mechanisms to address and minimise tax risks and our engagement with the ATO reflects the high levels of trust that the ATO has in IBM Australia as a significant taxpayer in Australia.

IBM in Australia

IBM Australia is a wholly-owned group of companies of International Business Machines Corporation, a publicly listed company in the United States of America, which celebrated its centenary in 2011 and operates in more than 175 countries. In 2013, IBM Australia generated revenues of \$4.123 billion.

Established in 1932, IBM Australia's technology and services have helped Australian organisations grow and transform for more than 80 years. IBM Australia's business operations include the provision of sales of hardware and software products, marketing of IT and consulting services, with offices around Australia. IBM Australia also operates a financing business.

IBM Australia faces the Australian market and is the main IBM contracting party with Australian customers. IBM Australia's customer base consists mainly of business and government customers. IBM Australia's contracts principally involve the provision of on-the-ground services or products by its substantial workforce, which requires a considerable presence in and strong nexus with Australia.

IBM's global expertise and innovation is helping Australia compete in the world economy and build world-leading national expertise with investments such as:

- the IBM Research & Development Laboratory in Melbourne, which links research scientists with development engineers to rapidly deliver innovations to market;
- the IBM Australia Development Laboratory, a network of innovation hubs in 5 locations around Australia tasked with developing, expanding and supporting IBM's vast portfolio of globally competitive software products; and
- the IBM Natural Resources Solution Centre in Perth, which helps mining, liquefied natural gas and petroleum companies accelerate the development and adoption of innovative technologies and business strategies.

IBM Australia is also dedicated to corporate citizenship and works in partnership with not-for-profit organisations and government departments by providing IBM technology, expertise and employees' time to support Australian communities. Its programs have included:

- the Smarter Cities Challenge, which provides IBM Australia consultants on a pro bono basis to help Australian cities meet the challenges of the future;
- more than 14,800 volunteer days pledged by IBM Australia employees as part of IBM's Centennial celebrations;
- donation of critical disaster and response infrastructure in times of national emergencies, such as the Queensland floods in 2011; and
- energy conservation and climate protection programs in Australia.



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✓ We trust that this submission assists the Committee with its inquiry, but if you require any additional information, please let us know.

Yours sincerely

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