

15 May 2015

Mr Alan Raine
Principal Research Officer
Senate Economics Legislation & References Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Raine

Response to Senate Economics Committee – Corporate Tax Avoidance, Additional Questions on Notice

I refer to your email of 4 May 2015 in which you seek answers to the questions that Senator Milne has raised in relation to News Corp Australia. By way of background I refer to our submission of 2 February 2015, which stated that over the last five years News Corp Australia has paid over \$417.3 million in income and withholding taxes (as stated in that submission, that figure comprises \$292.5 million in income tax and \$124.8 million in withholding tax). In addition, we have also paid another \$900 million in Australian goods and services, fringe benefits and payroll taxes over this same period.

As you know, Julian Clarke and I appeared before the Committee on 8 April 2015 and answered an extensive range of questions from the Senators about our tax affairs. We also, following our appearance, provided the Committee a copy of the ASIC Instrument 14-0366 in a timely manner. I believe our approach to date demonstrates our willingness to be open and transparent with the Committee, as was recognised by the Chair of the Committee.

In addressing the additional questions on notice, I have sought to balance our desired openness with the relevance and utility of the information sought to meeting the terms of reference of the Inquiry. As such, while I provide responses to many of the questions, there are a number which I believe are neither relevant nor helpful to the inquiry and its terms of reference. To that end, I now refer to each question raised below:

- (1) Please provide separate figures for the amounts of income tax and withholding tax for each year 2005-2014 showing separately any amounts that are not included in the financial reports of News Australia Holdings Pty Ltd, and;**
- (2) What is the amount of corporate tax paid by News Australia Holdings to the ATO over the past ten years, not including the amount ultimately refunded by the ATO as a result of the *Commissioner of Taxation v Messenger Press Proprietary Limited* case?**

News Corp Australia has already provided the Committee with full details on the tax the company incurred for the last five financial years.

I do not believe that providing details of the tax we paid up to ten years ago is relevant given the Inquiry's terms of reference cover 'the adequacy of Australia's current laws'. It would also be difficult for us to secure this information.

Over the last the ten years there have been significant changes to the Tax Act including changes to the thin capitalisation, transfer pricing and anti-avoidance provisions, making tax returns from over five years ago less relevant to the 'adequacy of Australia's current laws'. This is particularly the case as all these changes to the tax laws are integrity measures designed to ensure that Australian businesses pay the right amount of tax. In addition, as Julian also outlined in his original letter to the Inquiry, the nature of the News Corp business in Australia has changed substantially over the past 10 years, making the company that I now represent as CFO, significantly different to the company from 10 years ago.

The yearly breakdown of income tax and withholding tax for the 5 years covered by our submission is below.

Income Year	2014	2013	2012	2011	2010	Total
Income Tax paid	61.9	43.2	31.4	67.5	88.5	
Withholding Tax paid	23.2	21.0	26.3	28.9	25.4	
Total Tax paid	85.1	64.2	57.7	96.4	113.9	417.3

(3) Over this ten year period, please provide a breakdown of how much is the total company tax paid as a percentage of operating cash flows before tax?

We have already provided the Committee with information on our effective tax rate for the past five years, as requested by Dr Kathleen Dermody on 27 October 2014. As you know, the effective tax rate is determined by taking the tax expense incurred and dividing it by the accounting profit before tax. Tax paid as a percentage of operating cash flow, as requested in this question, is not a generally accepted metric for the calculation of an effective tax rate, nor is it relevant to compliance with any of our reporting or taxation obligations. As it is inconsistent with both what the Committee sought (in its letter of 27 October 2014) and accepted measures of effective tax rates, I don't believe it is relevant to the matters at hand.

(4) If the return of capital of \$4.5 billion to the News Corporation parent company had been made as dividends and therefore giving rise to the recognition of dividend income in US, what amount of tax would have been payable in the US on that dividend income?

I note that this is a hypothetical question, and it is a matter of fact that we were perfectly entitled to return the capital in the manner with which it was done. In my testimony to the Committee on 8 April 2015, I pointed out that even if this \$4.5 billion had been remitted to the United States in the form of dividends it would not have been subject to Australian withholding taxes, contrary to newspaper reports that said the company had avoided taxes by not remitting this money as a dividend.

The question above asks about the amount of US tax that would have been payable. I believe it is relevant to point out that I am the CFO of the Australian entity and US tax matters are not part of my remit or decided by me. However, my understanding is that for US tax purposes, it is not relevant to the characterisation of a distribution whether, for company law purposes, the distribution was made in the form of a dividend or a return of capital.

In any event, of the total \$4.5 billion reported for Australian purposes as a return of capital, \$3.2 billion relates to capital returned to News Corp in the US in connection with the separation of News Corp into two companies in 2013. Having consulted with my US colleagues, they have advised me that the US Internal Revenue Service confirmed that this distribution was tax-free in the US.

In addition, when News Corp, the US parent company, receives a distribution from News Corp Australia which does give rise to dividend income under US tax rules, the dividend income is subject to tax at the US tax rate of 35%. US tax on the dividend income may be reduced by available foreign tax credits associated with Australian taxes paid on the earnings from which the dividend is sourced.

(5) Is the News Corporation group deemed 'High Risk' by the Australian Tax Office?

Companies are categorised by the ATO within the various levels of their Risk Differentiation Framework. We understand that the "high" categorisation given to us denotes the complexity of the company and therefore the time and resources required to monitor the complex taxation issues.

It should be noted that this categorisation does not imply that we are not paying the correct amount of tax. What it means is that we are subject to continuous review from the ATO. As a result, the ATO has a high level of visibility over our tax affairs.

Current News Corp Australia management engages in consultative discussions with the ATO on various matters, with a view to moving from the high risk category. This was recognised by the ATO in its evidence at the Committee's hearings.

However, like all taxpayers, the company has the right to challenge the ATO's interpretation of the law where a matter is considered uncertain. This is evidenced by the Federal Court's full bench ruling in favour of the company in the well documented foreign exchange case.

As we said at the Senate Committee inquiry, the company's policy position on corporate tax is to pay the right tax, not more, not less. We treat seriously our obligation to the nation to comply with the taxation laws, as well as our obligation to our shareholders to ensure that we arrange our financial affairs fairly and efficiently, in accordance with the law.

(6) In testimony provided to the committee, it was implied that News Australia Holdings only has one shareholder, News Corporation based in New York. Can they confirm NAH have three shareholders and please list the names and taxation jurisdictions in which these shareholders are located in?

In testimony to the Committee I was clear that NAH was ultimately owned by News Corporation in the United States. News Corporation is one of its shareholders and has a direct shareholding of 93%. The other two shareholders in NAH are News Australia Holdings LLC and News FHC Holdings LLC, which together have a shareholding of 7%. Both of these shareholders are in turn owned by News Corporation.

All three companies are domiciled in the United States.

(7) In relation to the information contained in appendix 1 of the submission, the operating profit before tax numbers correspond to those reported in the financial statements of News Australia Holdings, however the income tax paid numbers do not. For example, the statement of cash flows for 2010 shows income tax paid of \$94.7m but according to Appendix 1 income tax paid is \$113.9m. The discrepancy of \$47.3m. Please provide an explanation and any necessary adjustments that need to be made to the Appendix.

Taxes paid as disclosed in Appendix 1 of our submission dated 2 February 2015 reflect tax payable relating to taxable income for the relevant year, irrespective of whether it is paid in that year or subsequent years. In contrast, the statement of cash flows will reflect tax payments as and when they are made and may not relate to the year in which they are paid. As a result, differences may arise due to the timing of the payment of company tax instalments (which are an estimate of a company's tax liability for a particular year), final payment of a prior year tax liability, or receipt of refunds associated with prior year tax returns filed. Our submission is accurate in relation to both what is shown in the accounts and the actual tax paid in any given year. As a result, I do not believe any adjustments need to be made to Appendix 1.

I trust that the above answers have been helpful to the Inquiry.

Yours sincerely

Susan Panuccio
Chief Financial Officer