



Centre for  
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Senate Finance and Public Administration Legislation Committee  
Parliament House  
Canberra ACT 2600  
[fpa.sen@aph.gov.au](mailto:fpa.sen@aph.gov.au) (submitted by email)

## **Public Governance, Performance and Accountability Amendment (Tax Transparency in Procurement and Grants) Bill 2019**

The Centre for International Corporate Tax Accountability & Research (CICTAR) thanks the Committee for allowing for an extension and the opportunity to provide a submission. CICTAR strongly supports the Public Governance, Performance and Accountability Amendment (Tax Transparency in Procurement and Grants) Bill 2019. As a basic common-sense proposition, the federal government should not be giving contracts or grants to companies engaged in aggressive tax minimisation schemes involving tax havens. 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 obligations in Australia and elsewhere. There is also a significant correlation between tax haven use, aggressive tax avoidance and other harmful business practices, including corruption and bribery.

The information requested by this bill is not readily available to those making procurement or funding decisions. The information does not pose a reporting burden as most 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, this information is currently not accessible outside of the ATO and cannot be used for procurement or funding decisions. Many multinationals do not publicly report the full extent of tax haven subsidiaries. The requirement for the Statement of Tax Record, as a result of the Black Economy Task Force, for contracts over \$4 million is a positive step in the right direction, but lacks sufficient measures to ensure contracts are not awarded to company's using tax havens and engaged in legal but aggressive tax avoidance practices.

### **Summary**

This submission includes new research and builds upon [other research](#) by CICTAR. The submission exposes the extensive tax haven usage of ten large government contractors across a wide range of federal procurement (**Bupa, Serco, Raytheon, Northrop Grumman, Oracle, Accenture, IBM, SAP, Amazon and Wilson Parking/Security**). These companies collectively received over \$56 billion in federal contracts since 2007 and all received substantial federal contracts in 2019. Some of these recent contracts were awarded despite public awareness of tax havens, tax avoidance and failures to deliver appropriate products or services under existing contracts in Australia and elsewhere.

As one example, Bupa was awarded a \$3.4 billion contract, the largest contract awarded in 2019, to provide health care services to the Australian Defence Forces despite reaching a settlement of \$157 million for tax avoidance with the ATO and failing to meet basic accreditation standards at the majority of its aged care facilities. Bupa continues to use tax



havens and has been pursued for tax avoidance in other jurisdictions. Research by CICTAR has shown that other large aged care providers have also used tax havens and that the funding of the aged care sector lacks sufficient transparency and accountability.

Bupa subcontracted \$1 billion of this ADF healthcare contract to Serco, whose contract to manage onshore detention centres, including Christmas Island, was renewed for another two years in 2019. Appleby, the law firm at the heart of the Panama Papers scandal, was hesitant to take on Serco as a client as they considered the company to be “high risk”. Serco continues to use tax havens and has failed to meet adequate standards on hospital and prison contracts in both Australia and New Zealand.

Oracle and Accenture are part of competing consortiums on a massive federal contract to privatise visa processing. CICTAR was asked to provide information ([Question on Notice](#)) to a separate Senate Inquiry into privatisation. Both companies extensively use tax havens, have a global and local record of tax avoidance, and Oracle is in a major tax dispute with the ATO over transfer pricing. The Department of Home Affairs supplied ([Question on Notice](#)) the draft contract language for this contract, which should exclude both Oracle and Accenture from winning this contract. The strong language – forbidding contracts with tax avoiders – in this draft contract is highly commendable and should become a model for other federal contracts. It would also set a positive example for other jurisdictions on the role of public procurement in increasing transparency and responsible tax practices.

This submission is by no means comprehensive as the corporate structures of these companies are incredibly complex. However, it does provide ten examples of major corporations with large existing federal contracts that currently use tax havens and continue to be awarded new federal contracts. This submission is intended to create awareness of the scale of tax haven usage by large federal contractors and demonstrate why this bill is absolutely necessary. The ten companies are analysed individually followed by some conclusions and additional recommendations. CICTAR can provide all of the original source materials upon request and answer any further questions.

The information on the tax havens used by several multinationals in this submission, including Raytheon, Northrop Grumman, IBM, has not been widely covered in Australia or globally. The details on Oracle’s global tax haven structure ending in the Isle of Man, via Ireland, have also not been reported. Tax avoidance by Bupa, Serco, SAP, Wilson Parking/Security, Accenture and Amazon have all attracted significant public attention in recent years.



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## **Raytheon**

Raytheon is a US based multinational company that is one of the world's largest weapons manufacturers. Raytheon has had contracts with Australian Department of Defence since 2007 valued at over \$12.3 billion and ranked as the third largest federal contractor in 2019 with nearly \$1.6 billion in contracts. According to the 2017-18 ATO corporate tax transparency data, Raytheon's primary Australian subsidiary had total income of \$663 million and paid \$27 million in tax.

Raytheon's 2018 annual report filed with the US Securities and Exchange Commission (SEC) does not list the company's subsidiaries. Raytheon Australia Pty Ltd is a direct 100% subsidiary of Raytheon Systems Limited in the UK. According to the 2018 financial statements, this company had after-tax profits of £207.8 million and paid dividends of £442.1 to its immediate parent Raytheon United Kingdom Limited. Included in this total was £81.4 million in "a pass through dividend from Raytheon Australia Pty Ltd."

The 2018 annual report for Raytheon United Kingdom Limited, does not provide information on its direct ownership, only that the Raytheon Company in the US is "the ultimate controlling party and ultimate parent company." This holding company, with no employees, reported a profit of £445.5 million and paid a dividend of £454.1 million. Where did this dividend go?

Raytheon has an overseas company named Raytheon CCS Limited incorporated in the tax haven of Malta. One of the Malta company's directors is James Jay Wallace, Senior Counsel, Corporate Transactions. Raytheon International Inc, and at least two other Raytheon entities, are listed on the Dutch company registry. However, they are listed as local branches of US entities and no further information is available. Raytheon Investments Limited was previously registered in Gibraltar. Previous SEC filings of Raytheon listed the Marshall Insurance Group Ltd in Bermuda as a subsidiary. The registrar of companies in Bermuda lists this as an active company with Kevin G. DaSilva, Raytheon's vice president and treasurer, listed as a director. Captive insurance companies, in tax havens such as Bermuda, are frequently used as part of a tax avoidance scheme.



### **Northrop Grumman**

Northrop Grumman is another massive contractor with the Department of Defence and also a major US multinational and weapons manufacturer. Northrop has had federal contracts worth over \$10.1 billion since 2007 and had 2019 contracts for \$208 million. According to the 2017-18 ATO corporate tax data, the company had total income of \$243 million and paid zero in corporate income tax.

Northrop Grumman Australia Pty Ltd is directly owned by Northrop Grumman Global Holdings Limited in the UK. The 2018 annual filings of the UK company indicate that it is owned by Northrop Grumman International Holdings BV in the Netherlands. Very limited information is available from the company's Dutch filing or the several other Northrop Grumman subsidiaries, including Northrop Grumman Asia Holdings BV, that are also incorporated in the Netherlands.

The UK company's 2018 annual report states that it is an intermediate holding company and "provides services at cost plus fee to an affiliated entity. Turnover is derived from intercompany arrangements with an affiliated entity." The company incurred a loss of £58.5 million in 2018, compared to a profit of £39.9 million in 2017, "primarily due to the absence of dividend income from investment in group undertakings", which were £29.4 million in 2017. Nonetheless, in 2018 the company paid a dividend to the Dutch parent of £1.9 million. Subsequent to the end of the financial year, in January 2019 the company received a dividend payment of £12.5 million from a subsidiary. The UK filing also indicates that a "foreign jurisdiction" made a tax assessment related to dividends paid from 2008 to 2012 by a subsidiary.

Northrop Grumman's annual report filed with the SEC discloses only three subsidiaries, including Northrop Grumman Overseas Holdings, Inc, all of which are incorporated in Delaware. Older SEC filings showed Northrop Grumman Foreign Sales Corporation incorporated in the Barbados. According to documents from the Paradise Papers leaks, this company was closed in 2001. The company still operates Northrop Grumman Singapore Pte Ltd in Singapore.

The Australian filing shows the company made a loss in 2018, which was partially driven by \$29 million in recharges paid to offshore related parties. An additional \$49 million was still owed to related parties, not including \$92 million in a loan owed to the direct parent company in the UK. More than half of this loan was at an interest rate of 7%, far above market rates and a common trick used by multinationals to reduce taxable income. These related party sales are significant in the context of the cost of sales of under \$190 million.



## **IBM**

IBM is a US-based IT multinational, the world's largest patent holder and one of the biggest global employers. In Australia, IBM ranks as the 21<sup>st</sup> largest federal government contractor having received contracts valued over \$8.7 billion since 2007, including \$165 million in 2019. According to ATO corporate tax transparency data, IBM's total revenue in Australia exceeded \$3 billion in 2017-2018 but the company paid zero in corporate income tax.

The parent entity for IBM's business in Australia and New Zealand is IBM A/NZ Holdings Pty Limited. It is a subsidiary of IBM AP Operations B.V, headquartered in the Netherlands. IBM's most recent annual filing (10-K) with the US SEC 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. The Dutch parent company is not disclosed in the SEC filing either. Only three Dutch companies are disclosed in the SEC filing, but there are at least 20 Dutch IBM subsidiaries. Likewise, the SEC filing only discloses two Irish subsidiaries, but a search of the Dutch company registry for "IBM" identifies 29 separate entities, not including IBM Irish subsidiaries under other names.

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 may allow IBM to reduce its profits in Australia and shift them to tax havens.

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, which is a subsidiary of International Business Machines Limited, incorporated in the UK. Through a complex chain of intermediate UK holding companies, the UK business is also owned through the Netherlands.

IBM International Treasury Services is exempt from filing financial returns in Ireland, 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 is 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 US\$640 million and US\$250 million in interest and penalties to tax authorities since 2016.





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## SAP

SAP is a German-based multinational corporation which specialises in business software. 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 at least \$2.3 billion since 2007 and \$65 million in 2019 alone. The most recent ATO tax transparency data shows that in 2017-2018, SAP had a total revenue of \$1.05 billion but paid \$0 in 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 itself of \$434.2 million, of which \$399.3 million was to the German parent company, and \$34.8 million to other related entities. It purchased \$30.6 million in services from its parent company, and \$42.4 million from other related entities. Finally, \$117.5 million is recorded as 'other expenses', of which \$69.3 million was paid to the parent, and \$48.2 million to other related entities. In addition to this, the company provided 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". Despite losses, the Australian company paid \$1.2 million in income tax in 2018 and \$4.5 million in 2017. With no explanation, the company reported a "write-off of deferred tax assets" of over \$60 million in 2017.

These intercompany payments, through royalties, services and 'other', may allow SAP to artificially reduce or eliminate taxable profits in Australia and shift those profits offshore where they may be subject to lower tax rates. While the Australian accounts indicate large payments to the German account, it is likely that those payments may be transferred from Germany to other jurisdictions with lower tax rates or no tax on royalty or interest payments.

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 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.

The Australian filing fails to disclose which ‘other entities’ it is transacting with, or to provide reasoning for some of these transactions. SAP SE, the publicly listed German parent company discloses 265 subsidiaries, which includes entities registered in: Netherlands (10), Ireland (7), Singapore (5), UAE (5), Hong Kong (4), Switzerland (2), Cayman Islands (2), Mauritius (1), Bermuda (1), Panama (1), Mauritius (1), British Virgin Islands (1) and Luxembourg (1).

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.

SAP SE has adopted a code of business conduct which prohibits bribery and corruption and has implemented mechanisms to investigate and review compliance risk in relation to violation of anti-bribery laws. The company has faced investigation for bribery in Kenya, Tanzania, South Africa and Panama. SAP’s 2018 Annual Report states that it is currently facing allegations of violation of anti-bribery laws in ‘Brazil, Indonesia, South Africa, and other countries’.



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## **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 \$1.2 billion in Australian federal contracts since 2007, including \$101 million in 2019.

Globally, Oracle reported operating margins of 34% each year from 2016-2018 compared to Australian margins averaging 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, massive related party transactions of at least \$773 million for Oracle may have facilitated the shifting of profits from Australia to tax havens. Oracle is currently 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 and may represent profit shifting of around \$1 billion out of Australia.

Oracle's Australian business, as is the case with all global operations is owned through a complex web of Australian and Irish companies. The final Irish holding company is a non-resident Irish company registered in the Isle of Man and not subject to any income tax.

Oracle is one of many US-based multinational tech giants that use the infamous "Double Irish Dutch Sandwich" scheme to avoid billions in global corporate income tax payments. The top Irish holding company registered in the Isle of Man, which owns the Australian business, 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. This non-resident Irish company paid no income tax.

In 2013, Oracle paid €11m in Irish income tax on revenues of €7.24 billion which were reported in Ireland. This was 27% of global revenue, but tax was only due on Irish profits of €164.4 million. The same global corporate structures are clearly still intact and may be even more aggressively avoiding global corporate income tax. In 2017, prior to Trump's US tax cuts, Oracle – with US\$54.4 billion in offshore accounts – ranked 4<sup>th</sup> in the list of the large US corporation with billions stashed offshore. The offshore amount was 82% of Oracle's total cash.

Various ASIC filings show 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. Irish filings show that this Irish company is owned by ORACLE CAPAC SERVICES UC in Ireland and ORACLE OTC HOLDINGS GENERAL PARTNERSHIP in Delaware. Delaware is widely known as a tax haven and limited information is available on companies incorporated in Delaware and 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 operational Oracle subsidiaries in Ireland, is the location of the International Financial Services Centre where hundreds of companies are registered. It is also the address of Matheson, an Irish law firm that specializes in helping US multinationals – particularly tech and pharmaceutical companies – use Irish tax law to avoid global corporate income tax.

Oracle CAPAC Service UC, which is 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 indicates significant tax disputes and 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.” Oracle’s tax dispute in New Zealand became public in December 2019.

Despite having thousands of global subsidiaries, Oracle’s 2018 annual report (10-K) filed with the US SEC only lists 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, meaning they are incorporated in Ireland but registered in the Isle of Man and not subject to 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.”

According to the 2018 financial statements, OCAPAC Holding Company UC received dividends of US\$5.777 billion from subsidiaries and paid a dividend of US\$5.390 billion to its shareholders. The company recorded a profit US\$5.606 billion, down from US\$8.606 billion in 2017, and paid no tax in either year. After the dividend payment net assets were US\$26.805 billion. After the end of the financial year, an interim dividend of up to US\$5.500 billion was approved to be paid to shareholders in the 2019 financial year and an interim dividend of up to US\$4 billion in 2020.



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The company also directly holds a 100% interest in a Mauritius holding company, Oracle Global (Mauritius) Limited and indirectly owns a 100% interest in a Luxembourg holding company, Oracle CAPAC Finance S.a.r.l. The filing confirms the indirect ownership (99.93%) of all of the Australian companies and many other global companies.

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 had 2018 revenues of US\$4.362 billion, operating profit of US\$191 million and pre-tax profit of \$131 million. After deducting a tax charge of US\$179 million the company reported a loss of US\$48 million. However, the company paid a dividend of \$511 million to Oracle Global Partners. No tax was paid in Ireland.

Oracle CAPAC Services UC received dividends from subsidiaries of only US\$610,000 in 2018 compared to over US\$323 million in 2017. The company directly held several holding companies, including Irish holding companies for Vietnam and Korea, and a Hong Kong holding company and many global operating companies. The company also 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, another holding company 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 nearly \$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 unclear why this entity has a separate ownership structure, possibly to generate foreign tax credits to offset US income tax payments.

The 2018 financial statements of the two Australian holding companies contain limited information. The notes to the financial statements of Oracle Consolidation Australia Pty Ltd do show 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 amounted to \$46,543,412 at 31 May 2018. This loan is repayable on demand.” This Irish company is also registered in the Isle of Man.

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.

### **Oracle’s Australian Tax Dispute**

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 with a view to resolving this matter.”

Given that the tax dispute is over \$300 million and a statutory tax rate of 30%, the dispute may involve the shifting offshore of over \$1 billion in profits. This may be the largest transfer pricing scheme in Australia since the ATO’s landmark federal court victory against Chevron.



## Accenture

Accenture plc is publicly listed in the US but incorporated in Ireland. Accenture is a major government contractor and has received over \$3.9 billion in federal contracts since 2017, including \$264 million in 2019. 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. Very little information is available from Dutch or Irish filings of these entities.

Globally, Accenture reporting 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. While Accenture's Australian margins are significantly higher, they have declined every year to 4.9% in 2016/17 and rose slightly to 5.2% in 2017/18. In 2018, Accenture's massive related party transactions of nearly \$1.1 billion may have facilitated the shifting of profits from Australia to tax havens, primarily the Netherlands and Ireland.

Globally Accenture was previously owned through Bermuda but in the face of criticism over tax avoidance, 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 also be non-resident companies, registered in other tax haven jurisdictions.

The *Financial Times* reported in 2018 that a probe by British tax authorities covering an eight-year period and "related to a transfer pricing inquiry of routine transactions" resulted in a £77 million payment. The paper report that 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" which had been exposed due to Lux Leaks.

The Australian entity's 2018 financial statements state 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 (costs) with very 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 total over \$1.061 billion and are nearly half of the revenue of \$2.120 billion. 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 massive offshore related party payments.

The finance payments may be in relation to a loan of \$347.8 million to Accenture Finance Limited, which other company documents reveal is in Ireland. In 2017 this Irish company, which had a book value of €30.9 billion, was (according to Luxembourg financial statements) owned by Accenture International S.a.r.l. in Luxembourg. This Luxembourg company has since been transferred to the Netherlands, Accenture International BV, 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.





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### **Amazon**

Amazon is a smaller and more recent government contractor, but is another example of a significant federal contractor with an extensive record of [Australian and global tax avoidance](#). Despite Amazon's clear record of tax avoidance, it appears to have been awarded contracts, including in 2019, totalling \$106 million. Recent contracts are "whole of government" federal contracts for cloud computing services. These 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.

It appears to be the pattern of Amazon's business model in Australia, 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 has the federal government entered into a contract with a US subsidiary when Amazon has a Web Services business incorporated in Australia? Did Amazon Web Services, Inc., or any other Amazon affiliated companies, obtain a Statement of Tax Record from the ATO in order to obtain the most recent federal contracts?

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. The US court ruled in Amazon's favour that these practices were legal under current laws. 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. Many European countries have now implemented revenue taxes on digital transactions specifically to tax Amazon and other major global tech giants who have easily evaded taxation under existing global tax rules. Like many other multinationals, Luxembourg is critical to Amazon's global tax schemes. Amazon subsidiaries in Luxembourg charge fees to Amazon companies operating globally and reduce profits where they are earned and stash them in Luxembourg where they avoid tax. Amazon has at least ten companies incorporated in Luxembourg. These companies have had, and may continue to have, direct transactions with Amazon's Australian businesses. The lack of disclosure in Amazon's Australian filings makes it difficult to determine how related party transactions, which dominant the business model, may function.

In 2017, the Coalition government and 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". Australia's federal government's IT spending continues to be dominated by international tech giants with a track record of local and global tax avoidance. Australian tech companies, who do not use tax havens and aggressive tax avoidance schemes, face a major competitive disadvantage. Mr Taylor correctly 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."



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## **Bupa**

Bupa was awarded a \$3.4 billion contract, the largest federal contract in 2019, to provide healthcare service to the Australian Defence Forces. This contract was awarded despite Bupa reaching a \$157 million settlement with the ATO and failing to meet basic accreditation standards at more than half of its Australian aged care facilities. Bupa receives annual commonwealth government payments for aged care services of nearly half a billion dollars. Despite public commitments from Bupa to improve the quality of care, more facilities have continued to fail accreditation. Bupa subcontracted \$1 billion of the 2019 ADF healthcare contract to Serco (see below).

Although Bupa is technically a UK-based mutual company and “not for profit” it looks and behaves like a multinational corporation with aggressive tax avoidance practices. Australia is by far Bupa’s largest and most profitable global market. Bupa is Australia’s largest health insurance company and the largest for-profit aged care provider. Bupa also has an expanding optical and dental business in Australia. Bupa, beat out Medibank – which has a much better track record as an Australian taxpayer – to win the federal contract for medical exams for immigration and visa processing and for the recent \$3.4 billion contract for health services to Australian soldiers. Healthcare professionals who provide direct care to Australian soldiers have been alarmed by the awarding of this contract to Bupa.

Bupa has a track record of global tax avoidance in the UK and Spain and uses tax haven subsidiaries in global operations. Bupa is frequently before tax tribunals in the UK, has been under investigation by the Spanish tax authorities and is subject to a European Union investigation concerning illegal state aid. Bupa’s UK aged care facilities are owned through a Spanish subsidiary. Losses generated from under-funded aged care homes in the UK may be used to artificially reduce taxes owed in Spain on Bupa’s profitable Spanish hospital and healthcare businesses.

According to the 2018 filing of Bupa Finance plc in the UK, which indirectly owns Bupa’s Australian businesses, Bupa’s tax haven subsidiaries include: Amedex Insurance Company (Bermuda) Limited in Bermuda; Altai Investments Limited, Berkshire Group Limited and Dynamic People Group Limited in the British Virgin Islands; Bupa Malta Investments No. 1 Limited and Bupa Malta Investments No. 2 Limited in Gibraltar; Bupa Guernsey No 2 Limited, Bupa Holdings (Guernsey) Limited, Bupa LeaseCo Holdings Limited, Bupa LeaseCo. (Guernsey) Limited and UK Care No. 1 Limited in Guernsey; Bupa Holdings (Jersey) Limited in Jersey; Bupa Global Designated Activity Company, Hugh Bradley Limited, Oasis Healthcare Holdings Ireland Limited and Xeon Dental Service Limited in Ireland; Amedex Services Ltd. (St Kitts) in Saint Kitts and Nevis; Bupa Singapore Holdings Pte Ltd in Singapore; and dozens of companies in Hong Kong, including Great Options Limited, Marvellous Way Limited, Megafaith International Limited.

Many of the Hong Kong businesses appear to relate to the [Quality HealthCare](#) business which operates in Hong Kong, but is owned through Altai Investments Limited in the British Virgin Islands. The Jersey Companies Registry indicates that Bupa Holdings (Jersey) Limited was dissolved in September 2019. The final annual return of this company, received on 25 February 2019, indicates that it had shares valued at over \$202 million in New Zealand



Dollars. The Jersey filing contains very little other information. The two “Bupa Malta” companies in Guernsey, initially set up in Malta, have also been closed in September 2019. The Irish subsidiary, Bupa Global Designated Activity Company, is also registered in the Netherlands. Bupa has had many subsidiaries in the Netherlands which also seem to have been deregistered. Perhaps the settlement with the ATO and other investigations by global tax authorities have encouraged Bupa to reduce its global use of tax haven subsidiaries.

The UK filing also reported “provisions for penalties and associated costs of £21m relating to the in-principle agreement with the Australian Taxation Office” which contributed to raising “Bupa’s [global] effective tax rate’ to 34% from 21% in 2017. The filing also states that “to settle a number of disputed matters[,] ...Bupa will pay a total of approximately £88m to the ATO, reflecting taxes, interest, penalties and an offset for overpaid withholding tax, for the 2007 to 2018 years.”

A significant amount of additional research on the financial and tax affairs of Bupa and other aged care companies has been produced by CICTAR for a previous Senate inquiry and can be provided.



## Serco

Serco, the UK based publicly listed outsourced government services provider, is no stranger to controversy or tax havens. Serco has been awarded at least \$12.6 billion in federal contracts since 2007, including \$821 million in 2019. The 2019 figure does not include the \$1 billion subcontracted to Serco under Bupa's \$3.4 billion ADF healthcare contract. Serco is in the very top tier of all federal contractors by any measure. A [previous analysis](#) of Serco, and other company's with significant ATO contracts, raised concerns about Serco's low tax payments in Australia and the lack of transparency in Serco's Australian filings. Serco's global reputation has been so tarnished that Appleby, the Bermuda law firm at the centre of the Paradise Papers scandal, was hesitant to provide services to Serco as it considered the company to be a "high-risk" client.

At least 20% of Serco's global business is generated in Australia, mostly from federal government contracts, including immigration detention centres and various services to the Australian Defence Forces to the (ADF). Serco has had – and continues to have – significant contracts with state governments as well. Bupa subcontracted \$1 billion of healthcare services to the ADF despite Serco's poor record of operations at the Fiona Stanley Hospital in Western Australia, where its contract for services have been stripped down for failing to meet basic hygiene standards. Serco, because of failure to maintain basic standards, has also lost contracts for prisons with the New Zealand government, and state governments in Western Australian and Queensland. However, Serco is part of a public private partnership in New South Wales, along with a Chinese state-owned construction company, to operate what will be Australia's largest prison.

Serco's substantial business operations in Hong Kong are owned through the primary Australian entity, Serco Group Pty Limited. Serco's 2017 Australian filings provide no information about the profits, operations or tax payments of the Hong Kong company. The 2018 filings are likely to be as equally opaque and all transactions between the Hong Kong company, Serco Group (HK) Limited, are eliminated on consolidation. There is significant potential for Serco to shift profits out of Australia through its Hong Kong business in order to reduce tax liabilities in Australia. Serco also has a 40/60 joint venture, Hong Kong Parking Limited, with the Wilson Parking/Security Group, another major federal government contractor owned through tax havens. (see below)

Serco has several other tax haven subsidiaries, some of which may interact with the Australian business, these include: Serco Ferries (Guernsey) Crewing Limited and Serco Insurance Company Limited Guernsey, which changed its name to Cardinal Insurance Company Limited in September 2019, in Guernsey; Serco (Jersey) Ltd in Jersey, and Serco International S.a r.l. in Luxembourg. The Jersey and Luxembourg filings contain limited information, but the most recent Luxembourg filing states that the purposes of the company are to:

- “provide loans and financing in any kind or form” to any Serco Group companies,
- “acquire, hold and dispose of interests in Luxembourg and/or foreign companies and undertakings, as well as taking care of the administration, development and management of such interests”,



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- “invest in real estate, in intellectual property rights or any other movable or immovable assets in any kind of form”, and
- “carry out any commercial, industrial or financial operation, which it may deem useful in the accomplishment and development of its purposes.”

The report also states that the company is expected to be liquidated by the end of 2020 and “is party to the [2015] Share Purchase Agreement of the Indian Business..., which contains Tax Indemnity provisions which have not yet lapsed.”





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### **Wilson Parking**

The Wilson Group, compromising parking and security, has been awarded at least \$1.3 billion in federal government contracts. In 2019 alone, Wilson was awarded contracts totalling \$520 million, ranking it as one of the top contractors for the year. According to the most recent ATO data, in 2017-18 Wilson had total income in Australia of nearly \$1.2 billion but paid zero in corporate income tax payments. Wilson's links to tax havens have been publicly known since at least 2016, but the company continues to be awarded federal contracts. Wilson security, like Serco, was also implicated in the Panama Papers and was reported on in 2016 by the *Sydney Morning Herald* and by ABC's Four Corners programme.

A current search of the New Zealand Companies Register, which unlike the ASIC website is easily searchable, has free access to filings and includes beneficial ownership information, reveals the same tax haven ownership structure continues up to the present. Like the Australian business, the New Zealand businesses are owned through Wilson Parking Holdings Pte Ltd in Singapore. The ultimate holding company is listed as Genuine Result Limited at the Offshore Incorporations Centre in the British Virgin Islands. The ultimate owners are two brothers who are members of [Hong Kong's wealthiest family](#), one of whom served five years in prison on bribery charges. The brothers control Wilson Group Limited in Hong Kong through the giant property company [Sun Hung Kai Properties](#).



### **Conclusion & Additional Recommendations**

These ten examples of large multinational corporations with significant federal contracts and extensive use of tax havens clearly demonstrates the need for this important legislation. Many other large multinationals with federal contracts are also using tax havens. While there is an urgent need to change global tax rules there are important steps that national governments can take, such as this legislation, to increase transparency, encourage responsible corporate behaviour, level the playing field for all companies and ensure that tax dodging companies are not rewarded with federal contracts.

As these ten examples indicate, the additional information requested in this legislation is not currently readily available to government officials who are making procurement and funding decisions. Additional screening on past corporate practices, in Australia and globally, to ensure companies can effectively deliver on promised goods and services is also highly recommended.

The Tax Justice Network's [Financial Secrecy Index](#) is strongly recommended as the best tool to determine which jurisdictions are to be considered tax havens. Recent analysis by the European Union, the International Monetary Fund and other international bodies clearly indicates that countries such as Ireland, Netherland and Luxembourg frequently function as tax havens, or financial conduits, that facilitate multinational tax avoidance.

Other recommendations that would complement this legislation are a requirement for any entity – regardless of its structure(s) – that receives over \$4 million in federal funding should be required to file full financial statements with ASIC, without recourse to special purpose filings or reduced disclosure requirements. Almost all, if not all, of the ten companies in this submission use these exemptions to avoid meeting all of the requirements of Australian (and global) accounting standards. ASIC filings of these large multinational corporations, any many others, are unnecessarily opaque. Additionally, as a matter of urgency and to meet emerging global standards, Australia needs to implement a public register of beneficial ownership. Currently, it is not possible for governments or businesses to identify the ultimate owners of entities that they contract with or do business with. Other possible reforms to ASIC company registry and filing requirements are beyond the scope of this submission, but filings should be made free as is the case in both the UK, New Zealand, Luxembourg and many other jurisdictions. Filings are more easily accessible and far cheaper in many other jurisdictions, including Ireland and the Netherlands.

A final recommendation would be that multinational companies should be required to implement newly adopted [Global Reporting Initiative \(GRI\) tax transparency reporting standards](#). These 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.

In conclusion federal contracts and federal funding should not be awarded to companies that use tax haven structures or aggressive tax avoidance schemes. This proposed legislation is an important step in increasing transparency and promoting responsible government and corporate practices.