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Committee Secretary
Senate Economics References Committee
PO Box 6100
Parliament House
Senate Economics Committee
SG.64
Canberra ACT 2600

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Response to Senate Inquiry questions taken on notice

Dear Dr Dermody

Representatives of EY recently appeared before the Senate Economics References Committee. During that appearance three questions were taken on notice and required follow up. We now provide the additional information in respect of each of those open questions. We have also included a point of clarification pertaining matter raised during the hearing.

Yours sincerely
Ernst & Young

Rob Mcleod
Partner

Glenn Williams
Partner

Question 1

How many offices have you established in secrecy jurisdictions – the ones that are listed by the tax office? Where do you have offices in those secrecy jurisdictions?

According to the Australian Taxation Office the number of jurisdictions not effectively exchanging information with Australia is shrinking. This is occurring as jurisdictions enter Tax Information Exchange Agreements with Australia and/or commit to other international transparency arrangements. The current Australian Taxation Office list of "secrecy jurisdictions of concern" is set out below.

Cyprus
Hong Kong
Luxembourg
Panama
Seychelles

It should be noted that according to the Australian Taxation Office most of these have become "non-OECD participating partners" and have committed to eliminating harmful tax practices through transparency and effective information exchange.

EY operates in more than 150 countries around the world. EY does have offices in each of the jurisdictions listed above.

Question 2

The big four accounting businesses negotiated letters of comfort with the Luxembourg authorities. Did Ernst & Young organise or act for any corporations based in Australia or having operations in Australia? Did Ernst & Young act as a broker or a negotiator in any capacity to negotiate those outcomes with the Luxembourg government?

EY Luxembourg advises clients on obtaining rulings to confirm the tax treatment applicable in Luxembourg. We advise clients on obtaining rulings, draft ruling requests and in many cases act as the client's representative in approaching the Luxembourg tax authority. As is a matter of public record, clients who have requested these services have included corporations based in Australia or having operations in Australia.

Question 3

I now want to come back to the public accounts committee of the House of Commons...They said they were very concerned about a conflict of interest and insider engagement of the big four accounting firms with public sector agencies...What is your engagement with the tax office and Treasury? Do you currently have people seconded to them? Has Ernst & Young been contracted in any shape or form by a public sector agency in Australia to provide advice? I would like to know whether that has happened in the last five years in that context.

We have assumed that the context of this question is focused on the tax practice of EY and its involvement with those government bodies (e.g. the Australian Taxation Office and Treasury) that are involved in setting and administering tax policy. For completeness however we do acknowledge that in our broader Assurance and Advisory areas we do have engagements with public sector agency to provide a range of non-taxation professional services.

Since the appearance before the committee we have checked whether we currently have anyone on secondment. We can now confirm that EY currently does have a staff member who is seconded to Treasury. This secondment was agreed in response to a request from Treasury. The arrangements for the secondment are in accordance with normal Treasury procedures.

More generally EY personnel have interacted with Treasury and the Australia Taxation Office in a number of ways over the last five years. Generally this occurs through the normal consultation forums that Treasury and/or the Australia Taxation Office have established. These forums are used by those government bodies as a way to obtain feedback about current or newly proposed tax legislation. Many other businesses, industry bodies, welfare organisations and professional bodies also regularly participate. We believe these interactions are a very valuable. They help provide government policy makers with feedback and insights regarding the decisions they make about the tax system. This helps ensure that tax laws achieve their intended policy aim in an efficient way with few unintended consequences.

Additional point of clarification

In addition to the three specific questions noted above we also want to respond to one other matter that was raised in the Senate Committee hearing. The following statement was made in the hearing.

"I also see that in the United States, Ernst & Young paid \$123 million to avoid prosecution there as a result of various schemes that we promoted and many of the clients faced bankruptcy. The \$123 million bought Ernst & Young out of facing prosecution. Is that correct?"

We now wish to clarify the position in relation to this matter.

On February 28, 2013, the United States member firm of EY entered into a non-prosecution agreement with the US Attorney for the Southern District of New York. The agreement represented the resolution of a matter involving the activities of a small group within EY that operated from 1999 to 2002. That group was disbanded in early 2003 and EY discontinued its activities. As part of the agreement, EY agreed to pay \$123 million to the government, an amount equal to the gross fees EY had received with regard to the activities of the group. The government recognized that EY had cooperated with the government in its investigation since approximately 2004, that EY had implemented extensive changes to its governance and compliance procedures, and that the wrongdoing by a small group of professionals at EY represented a deviation from the more than 100-year history of ethical and professional conduct by EY and its partners.