

Response to QONs – Tax Inquiry

Additional questions for ASIC

1. According to the financial statements of News Australia Holdings Pty Ltd covering the ten year period 2005 to 2014, and how much income tax paid is disclosed in the statements of cash flows. How much is the total income tax paid as a percentage of operating cash flows before tax?

Please find below the information requested from the financial reports of News Australia Holdings Pty Limited for the financial years ended 30 June 2005 to 30 June 2014. The figures are for the consolidated News Australia Holdings Pty Limited group. For convenience, we have also included income tax expense and profit before tax:

Year ended 30 June	Income tax paid /(received) [per cash flow statement]	Operating cash inflow/(outflow) before tax paid/(received) [per cash flow statement]	Income tax expense/(benefit) [per income statement]	Net profit before tax [per income statement]
2005	66.0	569.0	65.0	235.0
2006	16.0	266.0	128.0	499.0
2007	153.0	761.0	101.0	503.0
2008	174.0	636.0	124.0	598.0
2009	125.1	770.0	70.0	(455.6)
2010	94.7	756.7	193.0	491.5
2011	117.6	822.9	98.8	(201.6)
2012	64.5	740.6	19.4	(457.3)
2013	92.0	597.4	103.9	620.3
2014	(576.5)	906.5	(529.8)	355.9

* Per 2013 financial report. The 2013 figures were adjusted in the 2014 report on adopting a revised accounting standard AASB 119 Employee Benefits which increased 2013 net profit before tax by \$7.1m and increased 2013 Income tax expense by \$2.1m.

2. News Australia Holdings claims it has been given accounting relief by ASIC from filing financial statements for twenty subsidiaries in which it has a 0% ownership interest and where the ultimate owner of these subsidiaries is not a party to the deed of cross guarantee. Has ASIC granted individual relief for these twenty subsidiaries? If so under what grounds?

Background

Since the 1980s, ASIC and its predecessors have provided class order relief to wholly owned Australian companies from the requirement to prepare and lodge financial reports where they enter into deeds of cross guarantee with their Australian parent entity and with siblings in the wholly owned group. The relief is conditional on the Australian parent entity preparing consolidated financial statements and key financial information on the wholly owned group.

The intention of this relief was to reduce unnecessary reporting burdens by treating the wholly owned group as if it were a single legal entity. Creditors are able to see the group assets that are accessible through the deed of cross guarantee.

The relief is currently given under ASIC class order 98/1418. The class order only provides relief to wholly-owned subsidiaries that enter into a deed of cross guarantee with their parent. It does not apply to partly owned subsidiaries to eliminate any possibility that a minority shareholder could challenge the validity of the deed.

The parent entity must make all material disclosures in its consolidated financial statements that are required by accounting standards and the other financial reporting requirements of the Corporations Act. The financial reports of reporting entities (i.e. those entities for which it is reasonable to expect users dependent on financial reports prepared in accordance with all accounting standards, where those users cannot command the information they specifically require) must include any relevant disclosures on related party relationships and transactions.

Transactions and balances between entities controlled by the parent entity are eliminated and not disclosed. However, transactions and balances with entities outside that group are not eliminated. Some financial reporting disclosures may no longer be required that are material to a wholly owned subsidiary but not to the consolidated group.

The relief does not concern reporting by any foreign entities owned by an Australian company.

News Australia Holdings Pty Limited

In 2013, ASIC granted individual relief to certain Australian wholly owned subsidiaries of News Corporation from the requirement to prepare and lodge financial reports. The relief for the year ended 30 June 2014 was given through ASIC order 14/0366.

ASIC order 14/0366 effectively applies class order 98/1418 without the requirement for the subsidiaries concerned to be wholly owned by New Australia Holdings Pty Limited.

The relief only applies where the subsidiaries concerned are controlled by News Australia Holdings Pty Limited (“NAHPL”) for accounting purposes, in which case they are required to be consolidated by NAHPL under the accounting standards. The subsidiaries concerned are News Corporation Australia Pty Limited (“NCAPL”) and wholly owned subsidiaries of NCAPL.

The subsidiaries must still have entered into deeds of cross guarantee with NAHPL. To address the possibility of the validity of the deed being challenged by companies having a direct or indirect ownership interest in NCAPL, News Australia Holdings LLC, News FHC Holdings LLC and News Corporation have provided ASIC with an enforceable deed poll that is expressed to be irrevocable without the prior consent of ASIC, and for the benefit of the NAHPL and NCAPL, that:

- (i) they acknowledge the existence of the deed of cross guarantee;
- (ii) they undertake that News Australia Holdings LLC, News FHC Holdings LLC and News Corporation do not have, nor will have, any claim against the NAHPL or NCAPL in relation to the enforcement of the deed of cross guarantee; and
- (iii) they undertake not to challenge the validity or enforceability of the deed of cross guarantee.

3. How many exemptions to companies on filing their financial statements do ASIC hand out each year?

ASIC has the ability to reduce red tape by providing either relief to a class of companies from their financial reporting requirements (s.341 of the Corporations Act 2001) or relief to individual companies (s.340). Relief can only be granted where specified pre-conditions are

met (s.342), that is that compliance with the relevant reporting requirements would be misleading, be inappropriate in the circumstances or impose unreasonable burdens.

Statistics on the number of companies that take advantage of ASIC class orders on financial reporting are detailed in Appendix 2 to our submission to the Inquiry.

In addition, in the 12 months to 31 December 2014, ASIC gave 121 individual relief instruments relating to financial reporting under s.340 of the Corporations Act 2001. Many of these individual relief instruments would concern matters such as changes in financial year and extending the time to lodge a financial report, rather than providing relief from the requirement to lodge financial reports. We would need to manually review every one of these 121 individual instruments to provide the exact number of instruments that give relief from lodging financial reports with ASIC.

4. News Australia Holdings ceased to prepare general purpose financial reports in 2006. Isn't the News Australia Holdings group a reporting entity? Shouldn't the company have continued preparing general purpose financial reports for all years more information or disclosure about transactions and balances with related parties including any related parties in tax havens?

A company must prepare a general purpose financial report that complies with the full disclosure requirements of accounting standards they are a reporting entity. A reporting entity is an entity for which it is reasonable to expect there are users dependent on financial reports prepared in accordance with all accounting standards, and where those users cannot command the information they specifically require. Whether this is the case will depend on the relevant facts and circumstances of any particular company.

We will make enquiries of News Australia Holdings Pty Limited to understand why it is not being treated as a reporting entity for financial reporting purposes, and to ensure that the company is complying with its financial reporting requirements in this regard.

5. News Australia Holdings financial report for 2014. Please indicate whether each of the following is an irregularity based on the requirements of accounting standards:

- a. Insufficient description of accounting policies especially in relation to the creation of reserves on consolidation for a \$1.3 bn cash repatriation**
- b. Failure to separately disclose interest paid and interest received in the statement of cash flows**
- c. Failure to disclose imputation credits or franking credits available at period end**
- d. Net related party balance of \$3bn in the statement of cash flows comparative that does not reconcile to balance sheet information.**

In relation to the matters above concerning the financial report of News Australia Holdings Pty Limited for the year ended 30 June 2014:

- a. The consolidated cash flow statement discloses a cash repatriation of \$1,147.1 million and a repayment of intercompany borrowings of \$210.0 million. The consolidated statement of changes in equity shows an appropriation from reserves of \$1,357.1 million. We will make enquiries of the company in relation to these transactions to better understand if there is any irregularity;
- b. The cash flow statement has been prepared using the indirect method permitted by accounting standards. This method does not require each operating cash flow to be

disclosed. Instead the statement commences with the profit before income tax and is then adjusted by non-cash transactions to arrive at net cash from operating activities. However, the income statement discloses consolidated interest income of \$286.4 million and consolidated interest expense of \$266.1 million. The non-cash adjustments include interest paid of \$266.1 million. Accordingly, it would appear that, on a cash basis, interest received was \$286.4 million and that interest paid was nil. On that basis there does not appear to be an irregularity;

- c. The company is wholly owned by US companies in the News Corporation group. As foreign companies cannot use imputation credits, the relevance of disclosure of information regarding imputation credits seems unclear. On that basis there does not appear to be an irregularity;
- d. The statement of cash flows shows a decrease in liabilities to related parties for the parent entity of \$2,961.5 million (\$1.2 million consolidated). This figure can differ from the movements in liabilities to related parties from 30 June 2012 to 30 June 2013 shown in the notes 12 and 14 to the financial report for the year ended 30 June 2013 due to the effect of non-cash transactions. However, we will make further enquiries of the company in this regard to better understand if there is any irregularity.

6. News Australia's submission refers to Harper Collins Australia not being part of the News Australia Holdings Group. It appears that the financial report of Harper Collins Publishers (Holdings) Pty Limited for 30 June 2013 is missing from ASIC's public data base. Can you explain why ASIC has not followed up on this?

Harper Collins Publishers (Holdings) Pty Limited lodged its financial report for the year ended 30 June 2013 with ASIC on 20 April 2015. The financial report for the year ended 30 June 2014 was lodged on 10 November 2014 and the financial report for the year ended 30 June 2012 was lodged on 22 July 2013.

ASIC follows up on the lodgement of financial reports of proprietary companies where it becomes aware of non-lodgement through complaints or other intelligence. However, there is no requirement for proprietary companies to confirm to ASIC that they are small and not required to lodge financial reports (see the table on page 21 of our submission to the Inquiry). Hence, there is no means by which ASIC can identify all proprietary companies that are large and should have lodged financial reports but have not done so.

More information on our processes to follow up non-lodgement of proprietary company financial reports appears in paragraphs 78 to 84 our submission to the Inquiry.

7. Jeffery Knapp of UNSW has done some calculations on the income tax paid by the News Australia Holdings group over the ten years 2005-2014. He advises that the cost of getting the relevant financial reports from ASIC was \$380. In the interests of disclosure and transparency on corporate profits and income tax, do you agree that someone like Jeffrey Knapp should be able to access company financial reports from ASIC without having to pay hundreds of dollars for the privilege of reading what is supposed to be public information?

The fees charged to members of the public for accessing financial reports from ASIC's public database are prescribed by the Corporations Regulations made by Government. The regulations are tabled in each House of Parliament where they can be subject to disallowance motions.



The setting of these fees is a matter for government policy.

ASIC does not retain any of these fees as they are paid directly into government consolidated revenue. ASIC has very limited discretion to waive these fees.