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Committee Secretary
Senate Economics References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

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

Dear Committee Secretary

Inquiry into Corporate Tax Avoidance and Minimisation
Toll Holdings Limited Submission

Toll Holdings Limited (Toll) welcomes the opportunity to provide a submission to the Senate Economics References Committee in connection with the current inquiry into corporate tax avoidance and minimisation.

Toll is an Australian listed logistics provider with significant operations globally and a particular focus on the Asia Pacific region. We pay our fair share of tax in Australia (average effective rate of 28%). The significant number of subsidiary foreign entities we control are a legacy of acquisitions and provide no tax benefit to the company. In addition, we note that the Australian Taxation Office (ATO) regards Toll as a *lower consequence taxpayer* and has formally advised in writing that " ... *continuous reviews of Toll's income tax returns will not be a focus in the future*". The submission below provides the detail behind our introductory comments.

At the outset, we would like to express our support for the proposition that multinational organisations must pay income tax in accordance with the law. We recognise that the provision of vital services by government requires revenue and, by example, as users of transport infrastructure, we recognise the importance of government investing for the common good. Our submission seeks to illustrate Toll's commitment to meeting its tax obligations.

1. Background of Toll

Any evaluation of the tax profile and positions of a multinational group must occur in the context of the underlying business operations of that group.

Toll is an iconic Australian company and is a leading freight transport and logistics group operating both domestically and internationally. Since Toll listed on the Australian Securities Exchange in 1993, Toll has operated a number of transportation and logistics businesses that have grown in revenue from $118 million to over $8.8 billion in 2014.

Since 1989, Toll's corporate strategy has been to expand and deepen its integrated logistics global footprint. Over the last 25 years, approximately 100 acquisitions have been made in an effort to expand services in its domestic and international logistics offering. In particular, Toll's focus on expanding offshore has been to enable the Group to compete effectively in the global logistics marketplace, particularly in the Asia Pacific region.

Toll's principal activities include domestic and international freight and distribution, freight forwarding by rail, road, sea and air, warehousing, storage and distribution, end-to-end supply chain management and business logistics solutions. Toll is currently structured into five operating divisions that enable the efficient and effective delivery of these services and solutions to its customers. These operating divisions are:

- **Toll Global Express** (TGX) which provides express freight within Australia and globally via a network of operations and agencies. It also offers a broad range of business logistics solutions including cash logistics services, data and document management and recruitment services.

- **Toll Resources and Government Logistics** (TRGL) which is an experienced logistics provider to the Oil & Gas, Mining & Resources and Government & Defence sectors.

- **Toll Domestic Forwarding** (TDF) which specialises in domestic road, rail and sea freight forwarding within Australia and New Zealand.

- **Toll Global Forwarding** (TGF) which provides a full suite of international freight forwarding and advanced supply chain management services. Its service offering ranges from complex supply chain solutions through to port-to-port freight forwarding movements.

- **Toll Global Logistics** (TGL) which provides specialised contract logistics services. It provides a broad range of sophisticated transport, warehousing and value-added services around the Asia Pacific region including freight transport services, distribution services, warehousing, cross docking, wharf services, supply chain solutions and finished parts logistics.

Today, Toll has a sizeable global footprint with business operations across 1,200 locations in more than 50 countries, employing over 40,000 people worldwide.

1.1 Asian growth – a key to Toll's Asia Pacific growth strategy

Toll has grown through a vigorous program of strategic acquisitions and through organic growth to be one of the Asian region's leading providers of integrated transport and logistics services. This offshore expansion strategy is underpinned by Toll's multinational customers seeking global logistics and supply chain solutions.

Toll's significant offshore expansion officially commenced with the $1 billion acquisition of the Singapore based SembCorp Logistics (SembLog) in 2006. At that time, SembLog generated revenues in excess of $500 million and the group managed an expansive and comprehensive network of over 220 distribution centres, one million-plus square metres of warehousing space, across 15 high growth countries to service in excess of 1,000 customers. The main countries in which SembLog operated were Singapore, China, India and Thailand. Toll's Asian footprint was further supplemented by the acquisition of the Singapore listed and headquartered Sembawang Kimtrans in 2007 for $187 million which provided a range of the logistics services to clients in the marine and mining segment in the Asian region.

These acquisitions represent the foundation for what is today TGL and TRGL's offshore operating businesses.

Toll's expansion into the global freight forwarding business commenced with its $353 million acquisition of the Hong Kong based Baltrans Holdings Limited (Baltrans) in 2008. At the time, Baltrans was one of the largest Asia-based freight forwarding and logistics companies with an international network spanning many major cities throughout Asia, North America, Europe, Africa and the Middle East, with annual revenue of approximately $690 million. Since that time, additional offshore acquisitions have been made to supplement and build out the global footprint and network of the TGF division. These acquisitions included the 2010 acquisition of US based Summit Logistics, which was one of the largest providers of ocean freight services on the transpacific China to US trade route.

The Baltrans acquisition was the foundation for what is today the TGF operating division.

1.2 Toll has substantial business operations in Singapore and Hong Kong and does not generate tax benefits from its subsidiaries in 'Secrecy Jurisdictions'

Toll was referenced in the 2014 Tax Justice Network (TJN) Report as having 72 subsidiaries in 'secrecy jurisdictions'. The definition of secrecy jurisdictions used in the report encompasses a number of countries in which many Australian multinationals, including Toll, have existing business operations. In the case of Singapore and Hong Kong, which were included on the list, these are major regional hubs in Asia for doing business. In our view, it is misleading to refer to these countries as inherently being associated with tax secrecy.

Of the 72 Toll subsidiaries referenced in the TJN Report, approximately 50 are based in Singapore and Hong Kong which were acquired through strategically important business acquisitions. As outlined in some detail above, the commencement of the Toll's large scale expansion offshore was in our 2006 acquisition of the Singapore-based SembLog, the 2007 acquisition of Sembawang Kimtrans, and the 2008 acquisition of Baltrans.

In combination these operating businesses employed thousands of people when we acquired the businesses and continue to employ thousands of people today. These significant investments have been a fundamental part of the group's strategy to become a leading integrated logistics service provider in the Asia Pacific region.

As such, the proposition or intimation that Toll having a presence in these locations is inherently involved in some form of tax avoidance or enjoys some form of inappropriate tax secrecy is fundamentally incorrect and misleading.

Toll does have a legal presence in a small number of other so called secrecy jurisdictions in which it does not have substantive business operations. These include Bermuda, the British Virgin Islands and Luxembourg. However, Toll's ownership of these entities came as a result of its acquisitions and were not established by Toll to avoid paying tax in Australia or elsewhere around the world.

Importantly, Toll does not derive any tax advantage through its ownership of these entities.

In some instances, there are administrative rather than tax advantages in having entities in certain jurisdictions. For example, companies incorporated in the British Virgin Islands are very common and well known for holding investments into Hong Kong, with Toll inheriting these legacy structures when it made the broader business acquisitions.

The balance of our subsidiaries located in the other referenced secrecy jurisdictions (e.g. Malaysia, the United Arab Emirates and the Philippines) either carry out real business operations in those countries or were not established while under Toll's ownership but were included within the group of companies acquired by Toll in connection with its business acquisitions. In the case of the latter, all of these entities are either dormant or serve no other purpose or function than to hold Toll's investment in other foreign operating jurisdictions and do not generate any tax benefit for Toll.

1.3 Toll's commitment to reducing the number of redundant entities within the Group

Toll is currently actively embarking on a project to eliminate redundant entities within its corporate structure, including those non-operating holding entities located in secrecy jurisdictions that were acquired by Toll through its broader business acquisitions. In the past year, 16 entities have been eliminated including in Hong Kong, Singapore, the British Virgin Islands, the United States, the United Kingdom and South Africa.

Toll is also exploring the consolidation of operations as part of rationalising the legal entity structure, i.e. consolidating multiple business activities in one country into one single legal entity such that we can operate as efficiently as possible.

However, in many instances, there are economic costs and regulatory limitations in being able to easily dissolve or eliminate redundant entities. In this regard, there are some circumstances where Toll cannot commercially justify incurring a significant once-off cost to eliminate a redundant group entity that provides no ongoing detriment to the group when the only reason Toll may be required to do so is the perception that these companies may be used to generate tax advantages, which is certainly not the case.

2. Toll pays its fair share of tax

Toll pays its fair share of tax and strongly rejects any assertion or inference to the contrary. Toll is particularly concerned by the misleading assertions made in the TJN Report which suggests that Toll's average effective tax rate (ETR) for the last 10 years was 23%.

The TJN Report defines ETR as the quotient of income tax paid and accounting profit before tax. Applying this definition, we confirm that **Toll has paid $890m of corporate income tax over the last 10 years (2005-14) representing 28% of accounting profit before tax over the same period.** This equates, over the same period, to an average of $89m of income tax paid per annum from an average annual accounting profit of $318m.

This is consistent with Toll's tax profile that has been publicly reported noting that the market releases of Toll's effective tax rate have been based on income tax expense divided by accounting profit before tax.

In this regard, for the **past five income years the normalised[1] average effective tax rate has consistently been 26% – 29% with any material changes and reasons reported to the market.** Toll's audited financial statements for the past five years, as disclosed in its publicly available Annual Reports, contained the following statements regarding Toll's effective tax rate:

2014: *"After adjusting for the impact of restructuring and the sale of businesses, the normalised effective tax rate was 26%, mainly due to the benefits of the tax concession on coastal shipping income."*

2013: *"After adjusting for non-recurring items, the normalised effective tax rate was 29%."*

2012: *"After adjusting for non-recurring items, the normalised effective tax rate is in line with last year at 27%."*

2011: *"The effective tax rate for the Group is 28% compared to 20% in the prior year. The current year is considered more reflective of Toll's normalised tax rate than the prior year. The primary drivers for the lower rate last year were the significantly higher level of investment allowance and the impact of a prior year tax refund in Australia."*

2010: *"The Company's effective tax rate of 20% is lower than the Australian corporate tax rate of 30% due primarily to non-assessable and tax exempt income and overseas tax rate differences. In addition, the current year's effective tax rate includes the benefit of the investment allowance for eligible equipment investments and the recognition of the over provision of tax related to prior year income."* [2]

Over the last three years, **Toll's average normalised effective tax rate has been 27**%, with average income tax paid globally of $114 million per year over the same period. Approximately 83% (average of $95 million per year) of that total income tax has been paid in Australia. For

1 Eliminating large once-off adjustments such as the impact of impairments etc.

2 The combined once-off impact of the Australian investment allowance claim and income tax refund was 7% (i.e. 3% for the investment allowance and 4% for the tax refund – so on a normalised basis Toll's effective tax rate for the year ended 30 June 2010 was 27%).

completeness, Australian revenues currently represent approximately 65 – 70% of global revenues with 70 – 75% of group earnings before income tax relating to Toll's Australian operations.

An analysis of whether Toll is paying its fair share of tax could also extend to quantifications and explanations of the total economic and social contribution that Toll makes to the jurisdictions in which it operates. This includes contributions to other government revenues through other forms of taxes (such as fuel excise and property taxes) as well as the collection of other taxes on behalf of the government (such as employee taxes and value added taxes). However, for the purpose of this submission, we appreciate the focus is on income taxes and have not otherwise commented upon this substantial other tax contribution.

3. Toll's effective tax rate

Toll's average effective tax rate over the last 10 years has generally been slightly below the Australian corporate tax rate of 30%. There are numerous reasons why this outcome arises but, predominantly, the explanation falls into a combination of the three reasons discussed below.

i. Different tax rates in countries where Toll has commercial operations

Toll operates and generates real business income in jurisdictions that have a lower corporate income tax rate than Australia.

As indicated above and explained in more detail in Toll's Annual Reports and other publicly available information, Toll has substantial business operations in a large number of foreign jurisdictions – with the most material offshore operations being in New Zealand, Singapore and Hong Kong. The corporate tax rates in each of these jurisdictions (28% for New Zealand, 17% for Singapore and 16.5% in Hong Kong) are below the 30% Australian corporate tax rate. Whilst Toll does operate in a small number of jurisdictions that have a higher corporate tax rate than Australia, including the United States of America (35%) and Japan (37% - effective), trading conditions in those locations have been challenging and Toll has not, to date, generated significant profits in those territories to offset the effective tax rate effect of the lower prevailing tax rates in its more profitable offshore locations.

ii. Different accounting and tax adjustments

Put simply, there are differences between what the accounting standards prescribe as "income" and "expenses" and what the income tax laws prescribe as "assessable" and "deductible" amounts respectively. It is the accounting standards that govern accounting profit before tax (being the denominator in the effective tax rate calculation) whereas it is the tax laws that govern tax payments (being the numerator in the TJN Report's ETR calculation) or the underlying principles determining tax expense (being the numerator in the effective tax rate calculation generally used to report tax profile to the market). Key examples of different accounting and tax adjustments that have given rise to movements in the effective tax rate of Toll include:

- **Impairment expense** which is not deductible for taxation purposes. Toll recorded significant accounting impairments in the 2012 and 2013 financial years which resulted in the unadjusted effective tax rate exceeding 50% in those income years.

- **Utilisation of tax losses** are not accounted for in accounting profit before tax. The tax laws provide prescriptive rules governing the carry forward and utilisation of tax losses which ultimately impacts tax payments and tax expense. Utilisation of such tax losses has in Toll's case, resulted in a 1% point reduction to the five year average effective tax rate.

- Some of the accounting income derived by Toll is **exempt from income tax**. In particular, Toll has in the past generated income from undertaking specific activities (e.g. supporting international organisations with humanitarian assistance efforts) which are subject to specific tax exemptions in various locations where the work is undertaken.

iii. Australian tax concessions

Toll has accessed specific concessions and incentives contained within the design of Australian tax law. This is a direct result of policy initiatives legislated and implemented by the Australian Government to achieve specific policy and economic objectives. For example:

- Toll undertakes a range of eligible **Research and Development (R&D)** activities which qualify for the specific R&D incentives that exist within the Australian tax laws. R&D tax concession rules have been a feature of the taxation system for many years and the most recent variations to the rules as implemented by the Federal Government in 2010 noted that the rules are intended to provide benefits for eligible activities by targeting R&D that benefits Australia. The objective of the R&D concession is to boost productivity and economic growth by focussing the R&D tax incentive on activities that are likely to deliver economy wide benefits. Toll engages in R&D activity in Australia in accordance with that policy objective.

- In the 2010 income year, Toll was able to benefit from the specific **Investment Allowance** concessions implemented by the Federal Government in the wake of the global financial crisis, including an immediate 10% additional tax deduction for certain capital expenditure incurred by 30 June 2010. The benefit accounted for a 3% once-off reduction in the effective tax rate for the 2010 income year. In accordance with the Government announcements and associated material released at that time, the purpose of this concession was to encourage capital investment by Australian businesses and to provide a short term stimulus to the Australian economy in the face of the global financial crisis. As an organisation that is capital intensive, Toll incurred capital expenditure which qualified within that policy intent.

- More recently (i.e. for the 2014 financial year), Toll has qualified for the specific **tax exemption for qualifying shipping income** related to the operation of its shipping business. This exemption was implemented by the Federal Government in 2012. One of the specific objectives of the measure as stated was to reform and revitalise coastal shipping in Australia to create a competitive environment attractive to investors.

4. Findings of the TJN Report

Given Toll's background and explanation of its effective tax rate, we are concerned with the misinformation that has been disseminated within some media and political circles following the recent report released by the TJN.

The TJN Report claims that indicatively Toll has on average forgone (in other words underpaid) corporate income tax of $24.2m per annum. This has been computed by multiplying the average accounting profit before tax (irrespective of where the net income was derived) by the difference between the Australian corporate tax rate (30%) and the ETR as computed by the TJN (purportedly 23%). Clearly the conclusion has been reached based on simplistic assumptions without proper regard to how, and where, Toll generates its taxable income and therefore the TJN computations and conclusions drawn, in substance, lack accuracy or reasonableness.

5. Toll's tax compliance and governance commitment

5.1 Sound Tax Governance and Risk Management Framework

Toll has developed and operates under a very robust Tax Governance and Risk Management Framework (the Framework) that has been endorsed by Toll's Board of Directors and is managed by a capable and competent group of tax practitioners.

The Framework documents the basis upon which Toll manages its tax risks and complies with its tax obligations. Aside from containing the basis upon which Toll's Framework is structured it contains details and policies around Toll's tax strategies and objectives, operating policies as well as tax risk management and assessment processes. It also contains details of policies regarding the acceptable behaviours and code of conduct for Toll's tax function and the manner in which it deals with revenue authorities and external advisors. This document is regularly reviewed and assessed to ensure its currency and appropriateness. Further it has been proactively presented and shared with the ATO.

Within this Framework, Toll has developed a more specific Tax Compliance Policy which is publicly available on our website: http://www.tollgroup.com/tax-compliance-policy.

5.2 Toll maintains an open and real time relationship with the ATO

Toll maintains an open, cooperative and transparent relationship with revenue authorities. There have been occasions where Toll and revenue authorities have disputed the operation of particular taxation laws. However, in many instances where the taxation treatment of a particular matter has been uncertain, Toll has sought clarification from the relevant revenue authority. By way of example, eight binding private rulings have been lodged with the ATO over the past six years.

The ATO has conducted annual risk reviews in relation to Toll's taxation affairs and, to date, no material issues have been raised by the ATO in connection with those reviews over the past five years. Indeed, the risk rating assigned to Toll in accordance with the ATO's risk rating matrix has been reduced to the lowest level available for a multinational organisation of Toll's size and scale i.e. a *lower consequence taxpayer* which means that "*... continuous reviews of Toll's income tax returns will not be a focus in the future*".[3]

Toll's openness and transparency with the ATO is embedded in our *Tax Compliance Policy*, which has included annual face-to-face meetings with the Deputy Commissioner of Taxation of the ATO's Large Business & International Group as part of their active engagement with major corporates. At these meetings Toll's Chief Financial Officer and General Manager – Taxation present to the ATO on the current business issues and tax matters. The ATO has been invited on occasions in the past to visit Toll's business sites to further assist in their evaluation and understanding of our business operations.

5.3 Active engagement from the Toll Board in relation to tax matters

Toll's commitment to sound corporate governance, extending to tax compliance, is evidenced by the fact that the entire Board of Directors have historically been invited to attend the quarterly Audit and Financial Risk Committee (Committee) meetings. The current Chairman of Toll's Committee is the former National Managing Tax Partner of a leading international accounting firm. At the Committee meetings, current tax issues, and/or material tax developments relevant to Toll, are discussed and managed in accordance with our Tax Governance Framework.

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Toll is an Australian listed logistics service provider and has significant commercial operations globally with a particular focus on the Asia Pacific region. The significant number of foreign subsidiaries we control is fundamentally a legacy of Toll's acquisitions and provide no tax benefit to the company. As for Toll's presence in jurisdictions that the TJN Report refers to as 'secrecy jurisdictions' such as Hong Kong and Singapore, our Asian growth strategy and actual business activities point compellingly to the group's substantial operations in those jurisdictions. Such operations service Toll's customers in the relevant regions to help meet the Group's objective of becoming a world class integrated logistics service provider, particularly in the Asia Pacific region.

We have paid, and continue to pay, our fair share of tax as evidenced by our average effective rate of 28% over the last 10 years, with average annual income tax paid in the amount of $89m.

Should you have any queries or would like to discuss this submission further please contact Andrew Ethell, Group Director, Corporate Affairs

Yours faithfully

Brian Kruger
Managing Director
Toll Holdings Limited

[3] Letter from the Commissioner of Taxation dated 11 March 2014.