

Executive Summary

This interim report summarises the findings of the Senate Inquiry into corporate tax avoidance and aggressive minimisation, after holding five public hearings and receiving more than one hundred submissions. Given both the public interest and new issues that have been raised over the course of the inquiry, it will continue through the latter half of the year with a provisional final reporting date of 30 November 2015.

This interim report makes 17 recommendations over four areas:

- evidence of tax avoidance and aggressive minimisation;
- multilateral efforts to combat tax avoidance and aggressive minimisation;
- potential areas of unilateral action to protect Australia's revenue base; and
- the capacity of Australian government agencies to collect corporate taxes.

It is expected that the final report will focus primarily on transfer pricing and profit shifting, with a secondary focus on:

- excessive debt loading;
- foreign companies avoiding permanent establishment in Australia;
- the use of tax havens;
- exemptions from general purpose accounting; and
- the role of private accounting firms in tax avoidance.

Background to the interim report

The Senate Inquiry into Corporate Tax avoidance was referred to the Economics References Committee on Thursday 2 October 2014.

It was prompted by the publication a week earlier of the Tax Justice Network Australia (TJN) and United Voice report, *Who Pays for Our Common Wealth: the Tax practices of the ASX 200*, on Friday 29 September 2014.

The Australian Taxation Office (ATO) appeared with Treasury Revenue Group at Senate Additional Estimates a few weeks later, on Wednesday 22 October 2014, where the TJN report was the subject of intense scrutiny and discussion.

Tax avoidance was part of G20 conference discussions in Brisbane on 15–16 November 2014, specifically the development of the Base Erosion and Profit Shifting (BEPS) Action Plan.

When the inquiry met for its first hearing in Sydney on Wednesday 8 April 2015, there was recognition among both senators and witnesses that this issue was complex.

But when the 'tech majors'—Apple, Google and Microsoft—appeared before the committee, it became clear just how simple the principles of tax minimisation are.

Regardless of the political preferences of the senators on the committee, all can be confident that they have helped the public understand how the principles of operating an incorporated entity in Australia have changed.

In the past, a multinational company with a branch in Australia had a local board that was tasked with maximizing profits. But increasingly, Australian operations of multinational companies are becoming agents, shifting revenue offshore specifically to minimize Australian profits. This was evident throughout the inquiry.

The American headquartered technology companies run their Australian operations as marketing and distribution companies and shift revenue earned in Australia to other jurisdictions. The legitimacy of these transfers will continue to be a focus of the inquiry.

Australia's largest tax payer, BHP Billiton, found itself in the awkward position of being unable to inform the committee at a public hearing about the activities of its marketing hub operations in Singapore, only to read in newspapers that these were a matter of public record in the city state.

The pharmaceutical industry appears to set drug prices in Australia based on maintaining a small but astonishingly consistent profit margin of 3 to 4 per cent, while paying much larger revenues to parent companies overseas.

Commissioner of Taxation, Mr Chris Jordan, has used the inquiry to effectively promote the work of the ATO in leading efforts to increase global cooperation to combat tax avoidance.

The ATO also aided the committee by suggesting an alternative to the TJN's model for calculating effective tax rates, which is included as an appendix to this interim report.

The chair of the committee wishes to acknowledge Senator Christine Milne's contribution to the work of this committee during its inquiry into corporate tax avoidance and aggressive minimisation. It was on her initiative that the matter was referred to the committee and the committee wishes to record its sincere thanks for her unwavering support throughout this inquiry.

Recommendations

Evidence of tax avoidance and aggressive minimisation

Recommendation 1

3.68 The committee recommends that the Australian Government work with governments of countries with significant marketing hub activity to improve the transparency of information regarding taxation, monetary flows and inter-related party dealings.

Multilateral efforts to combat tax avoidance and aggressive minimisation

Recommendation 2

4.43 The committee recommends that the Australian Government continue to take a leadership role in finalising and implementing the efforts of the OECD in addressing problems associated with base erosion and profit shifting. However, the committee also considers that international collaboration should not prevent the Australian Government from taking unilateral action.

Potential areas of unilateral action to protect Australia's revenue base

Recommendation 3

5.31 The committee recommends that a mandatory tax reporting code be implemented as soon as practicable but no later than the current timeframe for the proposed voluntary public transparency code. Any Australian corporation or subsidiary of a multinational corporation with an annual turnover above an agreed figure would be required to publicly report financial information on revenue, expenses, tax paid and tax benefits/deductions from specific government incentives, such as fuel rebates and research and development offsets.

Recommendation 4

5.32 The committee recommends maintaining existing tax transparency laws which apply to both private and public companies.

Recommendation 5

5.39 The committee recommends establishing a public register of tax avoidance settlements reached with the ATO where the value of that settlement is over an agreed threshold.

Recommendation 6

5.40 The committee recommends that the government consider publishing excerpts from the Country-by-Country reports, and suggests that the government consider implementing Country-by-Country reporting based closely on the European Union's standards.

Recommendation 7

5.45 The committee recommends that the ATO, in conjunction with Treasury and other relevant agencies, provide an annual public report on aggressive tax minimisation and avoidance activities to be tabled in Parliament. This report could include estimations of forgone revenue, evaluate the effectiveness of policy and propose potential changes.

Recommendation 8

5.85 The committee recommends that the Australian Government tender process require all companies to state their country of domicile for tax purposes.

Recommendation 9

5.86 The committee recommends mandatory notification by agencies to the relevant portfolio Minister when contracts with a dollar value above an agreed threshold are awarded to companies domiciled offshore for tax purposes.

The capacity of Australian government agencies to collect corporate taxes

Recommendation 10

6.25 The committee recommends an independent audit of ATO resourcing, funding and staffing.

Recommendation 11

6.26 The committee recommends the ATO report to parliament, at least annually on:

- the number of audits or disputes launched concerning multinational corporations;
- the number of cases settled with multinational corporations;
- the number of successful legal proceedings concluded against multinational corporations; and
- the staff resources allocated to tax compliance of multinational corporations.

Recommendation 12

6.71 The committee recommends that taxation legislation be amended so that non-reporting entities are required to disclose related party information in financial reports under the Corporations Act if notified to do so by the ATO.

Recommendation 13

6.72 The committee recommends that the concept of 'grandfathered large proprietary companies' be removed from the Corporations Act, and these companies be required to lodge financial reports with the Australian Securities and Investments Commission (ASIC).

Recommendation 14

6.73 The committee recommends that all proprietary companies are required to review and confirm their size with ASIC annually.

Recommendation 15

6.74 The committee recommends that the confidentiality provisions in section 127 of the ASIC Act be amended to allow ASIC to share information with the ATO without having to notify the affected person.

Recommendation 16

6.75 The committee recommends that people who propose to become directors of companies be required to provide evidence of their identity to the ASIC.

Recommendation 17

6.76 The committee recommends that ASIC amend Class Order 98/98 so that a company is not eligible for financial reporting relief, where the ATO notifies the company and ASIC that the relief does not apply to that company.