

Government Senators' Dissenting Report

1.1 Government Senators have deep concerns about some of the recommendations made in the interim report.

1.2 Most significantly, the interim report fails to recognise that the Coalition Government has taken strong action in our nearly two years in office to combat corporate tax avoidance.

1.3 The Government is committed to ensuring companies pay tax on profits properly attributable to profit generating activities undertaken in Australia. In preference to introducing new taxes on Australians, the Government simply wants to ensure individuals or companies that are avoiding tax pay their fair share. The Government is determined to achieve this without increasing the overall tax burden, or imposing additional complexity on those individuals and entities that do abide by our taxation rules.

1.4 In our role as G20 President during 2014, Australia took the lead in global efforts to address international profit-shifting arrangements. We led the global effort to crack down on tax avoidance by multinationals through the two-year OECD Base Erosion and Profit Shifting (BEPS) Project. This leadership will continue well into the future.

1.5 As part of the May 2015 Budget, the Government actioned the 2014 G20/OECD BEPS recommendations on Country-by-Country reporting, harmful tax practices, exchange of revenue authority rulings and treaty abuse rules. Additionally, the Government has commissioned the Board of Taxation to report back on implementing the G20/OECD BEPS anti-hybrid rules by May 2016.

1.6 The Government has also taken important steps domestically to strengthen Australia's defences against tax avoidance, including the tightening of our thin capitalisation rules to prevent multinationals claiming excessive debt deductions.

Multinational Anti-Avoidance Law

1.7 On Budget night, the Treasurer released the details of a new Multinational Anti-Avoidance Law, which will prevent multinationals using complex and artificial structures to escape paying Australian tax. The draft law was released for consultation on Budget night.

1.8 Multinationals who break the law and avoid paying their fair share will have to pay back the tax they owe (plus interest) and face penalties of up to 100 per cent of the tax owed.

1.9 As a result of Tax Office investigations the Government, including our agencies, have identified 30 large multinational companies that may have deliberately shifted profits away from Australia to avoid paying their fair share of tax in Australia.

1.10 The Bill to implement our Multinational Anti-Avoidance Law is scheduled for introduction into Parliament in the coming sitting weeks.

Country-by-Country reporting

1.11 On 6 August 2015, the Government released an exposure draft of legislation to implement the OECD's Country-by-Country reporting regime.

1.12 Country-by-Country reporting will require multinational companies to disclose the key details of their activities in each jurisdiction they do business. Tax authorities will have a global picture of how multinationals operate, including detailed information on the global allocation of revenues, profits, taxes paid and other economic activities.

1.13 Country-by-Country reporting was one of the key recommendations developed during Australia's G20 Presidency. Furthermore, Australia is one of the first countries to commit to implement the regime.

Voluntary disclosure code

1.14 The Government will work with business to develop a code for the public disclosure of information on taxes paid by large corporates.

1.15 The actions of a few businesses, particularly large multinationals engaging in aggressive tax avoidance, have tarnished the reputations of many businesses that are doing the right thing.

1.16 Some large businesses have responded by releasing detailed information about their tax affairs. This is pleasing—indeed many of the witnesses during Committee proceedings voluntarily released details of their tax affairs.

1.17 In the 2015–16 Budget, the Treasurer asked the Board of Taxation to lead the development of a new code on greater public disclosure of tax information by businesses, particularly large multinationals.

1.18 The Board of Taxation is conducting consultations on this measure in August and September 2015. Indeed this process is well underway and consultations are currently occurring.

Private company transparency

1.19 Under current legislation, the Commissioner of Taxation will shortly be required to publish the total income, taxable income and tax payable of companies with total income of \$100 million or more each income year. This law was enacted by the former Labor Government.

1.20 However, this law contradicted repeated Labor commitments to protect confidential taxpayer information of private individuals.

1.21 The legislation also ignored the concerns of key stakeholders, went against international best practice and would potentially unfairly expose individuals to commercial and reputational damage.

1.22 For closely held Australian owned private companies, the publication of their tax affairs would effectively reveal details of the owner's finances, which would violate individual rights to privacy. The published information may also reveal commercially sensitive information which might harm the competitiveness of private businesses.

1.23 The law violates the important principle of taxpayer confidentiality. As former assistant treasurer Bill Shorten told the Parliament:

The taxation law has long recognised that such protection is fundamental to ensuring that taxpayers maintain their confidence in the operation of the tax system. (Source: Bill Shorten, then Assistant Treasurer, Hansard, Wednesday, 29 September 2010)

1.24 Former Treasurer Wayne Swan also recognised the importance of confidentiality when he said:

I would have thought that everyone out there that was concerned about good public administration would see the common sense in observing what the Tax Office says about confidentiality provisions because they are important to every Australian and it's not a decision of the Government, it's the decision of the Tax Office. (Source: Wayne Swan, doorstep interview: Brisbane: 24 January 2013)

1.25 The law would require publication of information already in the possession of the ATO.

1.26 Its release to a wider audience will not in any way enhance the ability of Australian tax authorities to collect additional revenue.

1.27 The release of this information will neither better protect the public nor enhance the quality of debate around tax avoidance.

1.28 The public will not be assisted in understanding the legitimacy of deductions or costs incurred by a company in calculating its reported income for a given income year, nor will the large number of state taxes an entity may pay (such as payroll and land tax) be considered.

1.29 It is the view of Government Senators that a voluntary disclosure code will strike a better balance between the need for transparency and the privacy and competitiveness concerns of business.

ATO resourcing

1.30 The ATO has been granted more resources than ever specifically dedicated to dealing with multinational tax avoidance.

1.31 The Public Groups and International division of the ATO has more specialised staff with greater access to resources than existed under the former Labor Government.

1.32 The ATO's multinational tax avoidance practice is also backed by significant private sector expertise and resources to ensure the effective sharing of industry knowledge.

Marketing hubs

1.33 The Government has ensured continued funding for the highly successful work undertaken by the ATO International Structuring and Profit Shifting (ISAPS) project, committing \$87.6 million over the next three years. Under the programme, the ATO is reviewing the affairs of companies that have undertaken an international restructure or have significant levels of related party cross-border arrangements (including offshore marketing hubs).

1.34 The ATO's exchange of information with other tax administrations supports its local information gathering efforts. The ATO has worked particularly hard to develop strong relationships with revenue authorities in important jurisdictions for tax structuring, such as the Inland Revenue Authority of Singapore.

1.35 Additionally, a new focus on negotiating tax treaties with enhanced integrity measures, such as the recent Australia-Switzerland double taxation agreement, will allow for better information exchange between tax authorities.

Senator Sean Edwards
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