

# Chapter 1

## Introduction

1.1 This is the final report of the inquiry by the Senate Economics References Committee into corporate tax avoidance in Australia. The matter of corporate tax avoidance was referred to the committee on 2 October 2014 for report by the first sitting day in June 2015.

1.2 The terms of reference for the inquiry are:

Tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia, with specific reference to:

- (a) the adequacy of Australia's current laws;
- (b) any need for greater transparency to deter tax avoidance and provide assurance that all companies are complying fully with Australia's tax laws;
- (c) the broader economic impacts of this behaviour, beyond the direct effect on government revenue;
- (d) the opportunities to collaborate internationally and/or act unilaterally to address the problem;
- (e) the performance and capability of the Australian Taxation Office (ATO) to investigate and launch litigation, in the wake of drastic budget cuts to staffing numbers;
- (f) the role and performance of the Australian Securities and Investments Commission in working with corporations and supporting the ATO to protect public revenue;
- (g) any relevant recommendations or issues arising from the Government's White Paper process on the 'Reform of Australia's Tax System'; and
- (h) any other related matters.<sup>1</sup>

1.3 In the 44<sup>th</sup> Parliament, the Senate extended the reporting date for the inquiry on a number of occasions, and it was ultimately moved to 30 September 2016. The inquiry lapsed at the end of the 44<sup>th</sup> Parliament.

1.4 On 11 October 2016, the Senate agreed to the committee's recommendation that the inquiry be re-adopted in the 45<sup>th</sup> Parliament, with a reporting date of 30 September 2017.<sup>2</sup>

1.5 On 1 December 2016, the committee resolved to broaden the scope of the inquiry to include Australia's offshore oil and gas industry, in particular:

The treatment and/or payment of:

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<sup>1</sup> *Journals of the Senate*, No. 59, 2 October 2014, p. 1588.

<sup>2</sup> *Journals of the Senate*, No. 9, 11 October 2016, pp. 195–197.

- i. royalties;
- ii. the Petroleum Resource Rent Tax (PRRT);
- iii. deductions; and
- iv. other taxes

by corporations involved in Australia's offshore oil and gas industry, including matters relating to the collection of these moneys by government.

1.6 The inquiry was extended a further three times: on 12 September 2017 to 28 November 2017; on 27 November 2017 to 6 December 2017; on 5 December 2017 to 30 May 2018.

### **Conduct of inquiry**

1.7 The committee advertised the inquiry on its website at the commencement and again when the scope was broadened. It wrote directly to government agencies, large corporations based in Australia and multinationals operating in Australia, industry groups and associations, academics and other interested parties drawing attention to the inquiry and inviting them to make submissions.

### **Submissions and public hearings**

1.8 The committee received a total of 167 submissions, of which three are confidential. Of these, 127 submissions were received in the 44<sup>th</sup> Parliament with the remainder received in the 45<sup>th</sup> Parliament. Submissions and additional information received are listed at Appendix 2.

1.9 The committee received over 8000 emails from individuals using an online tool coordinated by Sum of Us where people could express their concerns about the operation of the PRRT to the committee. The committee also received over 3000 emails from individuals concerned about corporate tax avoidance, particularly by energy companies, through a campaign organised by Get Up!. Due to the large number of emails received through these campaigns, it was not possible for the committee to accept them as submissions and publish them on the committee's website. However, the committee agreed to accept the emails as correspondence, and acknowledge them on the committee's website.

1.10 The committee held the following public hearings:

- 8 April 2015 in Sydney;
- 9 April 2015 in Canberra;
- 10 April 2015 in Melbourne;
- 22 April 2015 in Sydney;
- 1 July 2015 in Sydney;
- 18 November 2015 in Sydney;
- 21 April 2016 in Canberra;
- 28 April 2017 in Perth (PRRT);
- 3 July 2017 in Canberra (PRRT);

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- 4 July 2017 in Sydney;
  - 22 August 2017 in Sydney; and
  - 14 March 2018 in Melbourne.

1.11 A list of witnesses is provided at Appendix 3.

### **Background to inquiry**

1.10 The matter of corporate tax avoidance was referred to the committee because of widespread concerns about the nature and prevalence of tax avoidance and aggressive tax minimisation among large Australian corporations and multinational enterprises operating in Australia.

1.12 At the time of the inquiry's initial referral in 2014, a number of reports and investigations raised concerns that large corporations operating in Australia were not 'paying their fair share' of taxation revenue. The Tax Justice Network Australia (TJN-Aus) released a report, *Who Pays for Our Common Wealth?*, which calculated that a significant proportion of the largest listed companies (ASX200) did not pay anywhere near the statutory corporate income tax level of 30 per cent. Similarly, media reports indicated that a number of multinational enterprises were using complex tax structures and arrangements to minimise the amount of tax paid on profits derived from activities in Australia.

1.13 Much of the ongoing debate about multinational tax avoidance has revolved around whether companies pay their 'fair share'. In effect, the fair share debate is based on the relative contribution of various economic actors to tax revenue. There is a perception that most Australian businesses (both large and small) and individuals contribute appropriately to the tax base, while multinationals are able to use various tax arrangements to shirk paying a level of tax that is commensurate with community standards.

1.14 Mr Paul Oosting from GetUp! outlined some of the community sentiment towards multinationals that do not contribute to tax revenue:

We are seeing the screws put on everyday Australians through pressure put on them by things like the Centrelink debt fraud that this government has rolled out, attacking vulnerable Australians to try to get funds out of them, and at the same time we are seeing cuts to essential services like schools, hospitals and the other infrastructure...Here we have major international corporations who are paying absolutely zero dollars in tax, companies, like Chevron, who are making huge profits and yet are contributing absolutely nothing...to our nation. The public are rightly outraged by this.<sup>3</sup>

1.15 In a research paper on *Company tax and foreign investment in Australia*, Mr David Richardson from the Australia Institute came to the conclusion that cutting the corporate income tax rate only benefits foreign-owned companies:

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3 Mr Paul Oosting, *Committee Hansard*, 28 April 2017, p. 20.

We have seen how cutting the company tax rate does nothing for the ultimate resident owners of Australian companies. Only foreign-owned companies would potentially benefit.

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The present Treasurer has tried to present foreign investment as a 'must have' to keep the company tax cuts proposal alive. But we doubt many Australians really understand that the company tax plan amounts to a very large gift to foreign owners.<sup>4</sup>

1.16 In the context of a labour dispute at ExxonMobil Australia's Longford facility, the Electrical Trades Union claimed that:

The Federal Government would have us believe that tax cuts for corporations like Exxon will lead to higher wages: but the experience for our members shows that when corporations pay minimal or no tax, they still take opportunities to suppress and cut the wages of their workers.<sup>5</sup>

1.17 Foreign ownership and cross border operations allow multinational corporations the opportunity to use various tax strategies to reduce the amount of income tax payable. The issue is not whether these activities are legal but whether their conduct is ethically and morally defensible.

1.18 Corporate income tax, if structured and enforced properly, is one of the few mechanisms by which governments can ensure multinational corporations contribute to the society from which they profit. In effect, a robust corporate income tax regime is the means by which these organisations should repay the 'social licence' afforded to them to conduct their business in Australia.

### **Reports tabled by this inquiry**

1.19 The committee tabled two interim reports during the 44<sup>th</sup> Parliament:

- *Part I—You cannot tax what you cannot see* on 18 August 2015; and
- *Part II—Gaming the System* on 22 April 2016.

#### ***Part I***

1.20 The committee released a first interim report, *Part I—You cannot tax what you cannot see*, on 18 August 2015.

1.21 Given the broad scope of the terms of reference and the timing of the multilateral OECD/G20 initiative on base erosion and profit shifting, the committee resolved to report on the initial work of the inquiry and the four public hearings that were held in April 2015. The interim report examined the evidence presented to the committee by some of the largest multinational corporations operating in Australia. It concluded that, despite the recent efforts of successive governments to address corporate tax avoidance, significant concerns persist about multinational corporations

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4 Mr David Richardson, *Company tax and foreign investment in Australia*, Discussion Paper, The Australia Institute, January 2017, p. 27.

5 Electrical Trades Union, *Submission 157*, pp. 5–6.

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not paying an appropriate amount of tax in Australia relative to the profits derived from activities in Australia.

1.22 This report supported the ambitious OECD/G20 initiative to develop a coordinated response to base erosion and profit shifting but also noted that this initiative should not prevent the Australian Government from taking unilateral action.

1.23 The interim report made 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.

1.24 The recommendations of the interim report focused primarily on increasing the transparency of corporate tax affairs and ensuring that tax administrators could access the information required to identify and act on aggressive tax minimisation and avoidance. The report is available on the committee's website.

## ***Part II***

1.25 The committee released a second interim report, *Part II—Gaming the System*, on 22 April 2016. In this report on corporate tax avoidance, the committee continued its consideration of the importance of transparency with particular emphasis on transfer pricing and the secrecy surrounding this activity. The committee briefly touched on exemptions from general purpose accounting. It also looked at tax minimisation strategies including excessive debt loading and avoiding permanent establishment in Australia.

1.26 This report did not make any recommendations. The report is also available on the committee's website.

## ***Part III***

1.27 This report completes the committee's investigation into corporate tax avoidance by reflecting on the progress made since the referral of the inquiry in 2014. It considers options for continuing to improve the integrity of the corporate tax system, including where multinational sales have been accounted for offshore and/or taxable income in Australia has been reduced by aggressive transfer pricing and debt loading.

1.28 As the inquiry progressed, concerns were specifically raised about the activities of oil and gas multinationals with significant operations in Australia. With an expanded scope, the committee specifically considered the tax contribution of these companies for the extraction of oil and gas resources, particularly in relation to the Petroleum Resource Rent Tax regime.

## **Structure of report**

1.29 Including this introductory chapter, the report's structure is as follows:

- Chapter 2 reflects on Australia's progress in addressing multinational tax avoidance;
- Chapter 3 explores options to further improve the integrity of the corporate tax regime;
- Chapter 4 considers how transparency measures could be enhanced to increase the availability and usefulness of publicly available information; and
- Chapter 5 investigates whether the tax settings for oil and gas extraction are appropriate.

## **Acknowledgements**

1.30 The committee thanks all the individuals and organisations who assisted with the inquiry through written submissions and appearing at hearings. In particular, the committee would like to acknowledge the efforts that many companies and government departments made to make senior executives available, often at short notice.