

## Chapter 4

### Trumpeting transparency

4.1 A main focus of the committee's work and its previous reports has been improving transparency for both tax administrators and the community more broadly. This chapter continues this inquiry's emphasis on the importance of transparency and promotes even greater public availability of corporate information to contribute to a more informed debate about the tax affairs of multinational corporations.

#### Maintaining the pressure

4.2 The public availability of corporate tax information allows researchers, journalists and the wider community to scrutinise and question the structure and operation of private companies and multinational enterprises operating in Australia. The public's ability to scrutinise and question tax affairs is vital to build and maintain confidence and trust in the integrity of the tax system. These views were shared by Dr Zirnsak:

There's an important role on tax transparency from our point of view, about maintaining a sense of confidence in the tax system. It's important that citizens in a society have confidence in their tax system...

Our other concern within this space would be building the political pressure to allow for reform to happen, and the demonstration has been, both here and globally, that the public attention has helped move reform along. Without that, it doesn't happen.<sup>1</sup>

4.3 Dr Zirnsak also outlined how public disclosure can allow the community to lobby for change:

...if the ATO detects that there are certain forms of tax cheating going on, under the current system, as far as I understand, all they can do is go and talk to Treasury or to the minister's office and seek reforms. There's no way for people otherwise knowing what their concerns might be within that system, and there's no ability for others in the community to assess if there are concerns in the system, if the data is being kept secret. So the more transparency it actually allows for the independent checks, the more it allows us to know, when the tax authority is detecting problems, whether they're then being followed through and addressed.<sup>2</sup>

4.4 However, Publish What You Pay (PWYP) Australia noted that:

...voluntary measures to increase transparency are not working and have either stalled in participation or have minimal company participation.<sup>3</sup>

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1 Dr Mark Zirnsak, *Committee Hansard*, 22 August 2017, p. 6.

2 Dr Mark Zirnsak, *Committee Hansard*, 22 August 2017, p. 6.

3 Publish What You Pay Australia, *Submission 149.1*, p. 4.

4.5 Mr Michael West, a journalist and academic, was a strong advocate for greater transparency:

I think maybe 80 per cent of what we can achieve on multinational tax avoidance is in transparency and disclosure.<sup>4</sup>

4.6 Mr West also reflected on the importance of greater transparency and disclosure in supporting the efforts of tax administrators to raise revenue from multinationals:

According to the ATO, half of that [additional multinational tax revenue] is from tax avoidance measures, MAAL, and the ATO crackdown et cetera on the digital players, and the other half, according to the ATO people is from behavioural changes, presumably reputation. Another billion dollars just because multinationals are saying, 'We're going to keep getting hammered in the press', or 'We're going to get criticised in parliament'. It is purely reputation. So I would say that the name of the game here is transparency and disclosure—much more transparency and much more disclosure—and holding these people to account.<sup>5</sup>

4.7 This committee is proud of the role that it has played in facilitating greater public disclosure by multinational companies. However, the current disclosure requirements for multinationals and private companies are considerably less than for public companies. Reflecting this, the committee considers that more permanent measures to increase transparency are necessary. Proposals to ensure greater obligations are placed on multinational and private companies to increase tax transparency and facilitate greater scrutiny by civil society are presented below.

#### ***Reduce the public reporting threshold***

4.8 In June 2013, amendments to the *Tax Administration Act 1953* (TAA) required the Commissioner of Taxation to publish certain information about the tax affairs of corporate entities that have a total income equal to or exceeding \$100 million in an income year.<sup>6</sup>

4.9 In October 2015, legislation was passed that reversed the changes made in 2013 regarding the public reporting of tax affairs for Australian-owned private companies.<sup>7</sup>

4.10 In December 2015, similar reporting requirements were again legislated as part of the *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015*. The main difference between the original legislation and this new legislation was setting the income threshold for private companies at \$200 million (compared to only

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4 Mr Michael West, *Committee Hansard*, 4 July 2017, p. 15.

5 Mr Michael West, *Committee Hansard*, 4 July 2017, p. 15.

6 *Tax Laws Amendment (2013 Measures No. 2) Act 2013*.

7 *Tax and Superannuation Laws Amendment (Better Targeting the Income Tax Transparency Laws) Act 2015*.

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\$100 million for public companies, multinationals and foreign-owned private companies).<sup>8</sup>

4.11 The committee notes that the Senate Economics Legislation Committee undertook an inquiry into the Tax and Superannuation Laws Amendment (Better Targeting the Income Tax Transparency Laws) Bill 2015 in October 2015. The dissenting report by Labor Senators and the Australian Greens noted that:

The ATO gave evidence during this inquiry that one in five private companies earning over \$100 million do not pay *any* tax. This government should be making the scrutiny of large Australian private companies a higher priority.<sup>9</sup>

4.12 This committee considers that there should be no difference in the income threshold for private and public companies under these public reporting requirements, and, as a result, the income threshold for reporting by all companies should be aligned at \$100 million.

### **Recommendation 3**

**4.13 The committee recommends that all companies with a total income equal to or exceeding \$100 million for an income year be required to release tax information of the level specified in the *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015*.**

#### ***Public register of beneficial ownership***

4.14 Although companies facilitate private sector investment and growth, they can also be used to disguise the identity of those involved in illicit activities, including tax evasion, money laundering, bribery, corruption and terrorism financing. This is achieved through mechanisms such as the use of shell companies, the use of complex ownership and control structures, the use of bearer shares and share warrants, and the use of nominee shareholders where the nominator is not disclosed. Such actions have the potential to endanger confidence in the tax system and undermine the perceived legitimacy and validity of business and company regulatory processes and requirements.<sup>10</sup>

4.15 The importance of improving the collection and utilisation of beneficial ownership information has been recognised by the Australian Government and a consultation process has been undertaken with a view to considering what action may

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8 *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015*.

9 Senate Economics Legislation Committee, *Tax and Superannuation Laws Amendment (Better Targeting the Income Tax Transparency Laws) Bill 2015*, p. 23.

10 Treasury, *Increasing Transparency of the Beneficial Ownership of Companies*, Consultation Paper, February 2017, p. 1.

be needed in this area.<sup>11</sup> However, the consultation paper does not suggest that any potential register of beneficial ownership information should be publicly available.<sup>12</sup>

4.16 The Uniting Church of Australia argued for the public beneficial ownership register:

The Synod seeks that Australia introduce a requirement for a public register of the ultimate beneficial owners of companies, given the role shell companies and special purpose entities play in both tax dodging and many forms of illicit flows.

...

A public register of the ultimate beneficial owners of companies would be a significant step in addressing the risks raised by opacity of shell companies.<sup>13</sup>

4.17 Many submissions to the Treasury consultation process argued for any register of beneficial ownership to be publicly available and free to access.<sup>14</sup> For example, ActionAid Australia commented that:

...transparency of beneficial ownership has significant benefits not just for Australia, but also for lower-income countries where increased public revenue will allow governments to better meet their development objectives. However these benefits will only be realised if Australia ensures beneficial ownership information is centrally maintained and publicly accessible, automatically exchanged between authorities, and collected from trusts as well as companies.

...

Adequate accessibility by non-government stakeholders requires that information is easily available to the public and access to this information is not prohibitively expensive. ActionAid therefore recommends that a central register is maintained by the government, and information held on the register can be accessed free of charge.<sup>15</sup>

4.18 Publish What You Pay Australia was also concerned about the approach being taken by the Australian Government:

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11 Department of Prime Minister and Cabinet, *1.2 - Beneficial ownership transparency*, <https://ogpau.pmc.gov.au/commitment/12-beneficial-ownership-transparency> (accessed 27 November 2017).

12 Chartered Accountants Australia and New Zealand, *Submission on Increasing Transparency of the Beneficial Ownership of Companies*, 17 March 2017, p. 7.

13 Uniting Church of Australia, *Submission 74*, p. 184.

14 See also submissions to the Treasury consultation on a register of beneficial ownership by Transparency International Australia, Tax Justice Network Australia, Nook Studios, Dr Madeleine Roberts, and the Institute of Public Accountants.

15 ActionAid Australia, *Submission on Increasing Transparency of the Beneficial Ownership of Companies*, March 2017, p. 2.

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The movement towards beneficial ownership registries is towards open and accessible information. A closed registry demonstrates a lack of leadership by Australia in the region, puts us out of step with the global community, and threatens the success and sustainability of the numerous global initiatives Australia has committed itself to.<sup>16</sup>

4.19 The B Team highlighted the benefits for business of a centralised, public, free and open data register:

Public, open data and free access enables business to efficiently access and use information on who they are doing business with, reducing the costs and complexity of due diligence and risk management.<sup>17</sup>

4.20 It points out the dangers of restricting information:

...public beneficial ownership transparency brings the minority of companies with complex structures that obscure ownership in line with the public disclosure requirements of the majority of businesses. If public access to beneficial ownership information is restricted it protects these companies who...may use the corporate form to obscure their illicit operations or actions. We believe that this minority brings business into disrepute and requires no exemption from public disclosure.<sup>18</sup>

4.21 It also notes that the currency of data needs to be maintained:

Australia should institute approaches to ensure that information is verified on a regular basis, and that there are penalties for false or missing declarations. Again, open data can assist in facilitating regular checks and in supporting other institutions to compare the data to other sources of information.<sup>19</sup>

4.22 Finally, it summarises the potential value of public scrutiny of the data:

Lastly, public, free and open data access facilitates broad scrutiny of this information to identify discrepancies and fraud. This form of networked verification is of benefit to business by providing additional ways to identify false information.<sup>20</sup>

4.23 Associate Professor David Chaikin, a Barrister and Chair of the Discipline of Business Law at the University of Sydney Business School, argued that charging fees to access the central register would undermine the basic goal of transparency:

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16 Publish What You Pay Australia, *Submission on Increasing Transparency of the Beneficial Ownership of Companies*, 14 March 2017, p. 8.

17 The B Team, *Submission on Increasing Transparency of the Beneficial Ownership of Companies*, 13 March 2017, p. 1.

18 The B Team, *Submission on Increasing Transparency of the Beneficial Ownership of Companies*, 13 March 2017, pp. 1–2.

19 The B Team, *Submission on Increasing Transparency of the Beneficial Ownership of Companies*, 13 March 2017, p. 2.

20 The B Team, *Submission on Increasing Transparency of the Beneficial Ownership of Companies*, 13 March 2017, p. 2.

If Australia continues to charge fees for accessing corporate information, the potential benefits of a central registry will be more limited than is the case, say in the United Kingdom, which permits the entire PSC data set to be downloaded by the public at no cost.<sup>21</sup>

4.24 In its submission to the inquiry, ActionAid Australia noted that:

...Australia's efforts to tackle beneficial ownership have stalled. Under the Open Government Partnership the government has failed to meet its own deadline for announcing a policy response following public consultation in 2017.<sup>22</sup>

#### *Committee view*

4.25 Having access to information that can identify who ultimately owns a company, rather than just who is listed on company paper-work, is another important element of improving transparency.

4.26 Based on the consultation paper put forward by Treasury, it would seem that the government is considering implementing a register of beneficial ownership where the information collected is only available to government authorities. In addition, it appears that the government may not extend reporting requirements to trusts.

4.27 The committee believes that there are clear benefits to both business and the broader community from having a publicly accessible central register of beneficial ownership for companies, trusts and other corporate structures. Not only would a register of beneficial ownership assist journalists, academics, advocacy groups and other interested parties to identify links between companies, it would also be a valuable resource for businesses interacting with each other. Consideration should be given as to how a central register could be established and maintained so that the information contained within it is publicly available and free to access.

#### **Recommendation 4**

4.28 **The committee recommends that:**

- **companies, trusts and other corporate structures be required to disclose information regarding their beneficial ownership;**
- **a publicly accessible, central register be maintained by a suitable government agency; and**
- **this information be included in the review as set out in Recommendation 6, with the intent to find ways to provide this information free of charge or at a reduced cost.**

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21 Dr David Chaikin, *Submission on Increasing Transparency of the Beneficial Ownership of Companies*, 13 March 2017, p. 4.

22 ActionAid Australia, *Submission 163*, p. 6.

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### *Accounting standards*

4.29 The quality and comprehensiveness of financial accounts was raised as an issue by a number of stakeholders. Of particular concern was the continued move by an ever increasing number of multinational companies towards filing special purpose accounts with reduced detail compared to general purpose financial statements.

4.30 Special purpose accounts can be filed by corporations that are not considered a reporting entity; that is, the corporation does not reasonably expect the existence of users who rely on the entity's general purpose financial statements for information that will be useful to them for making and evaluating decisions about the allocation of resources.<sup>23</sup> Effectively, special purpose accounting allows companies to comply with only five accounting standards, compared to general purpose accounting where compliance with 25 accounting standards is required.

4.31 Indeed, it appears that the move by multinationals to file special purpose accounts has been growing significantly, further obscuring the potential for public scrutiny of the tax affairs of Australian subsidiaries. Mr West noted that:

There are accounting requirements that say if you change your accounting treatment [from general purpose to special purpose] you have to reveal it in the accounts and explain it. That is what the notes are for. None of these multinationals have given any explanation in any of the notes. They are all audited, and the big four [accounting firms] all do the tax work as well, and yet there is no explanation.<sup>24</sup>

4.32 Mr West used the example of public company reporting standards to argue for the same requirements for multinationals:

...if you are on the stock market... anybody can go and have a look at your financials. You file general purpose financial reports, as do all the big banks and supermarkets and all the companies on the ASX [Australian Stock Exchange]—even the little mining companies. They all file general purpose statements. They are competing against multinationals. Why can't the multinationals be on the same playing field? They have all the resources.<sup>25</sup>

4.33 Dr Zirnsak also commented on the utility of general purpose accounts:

If you have general purpose accounts, you get an awful lot more information than when the company gets away with some of the reduced standards that they're allowed to report on. That would certainly be an area in which we would encourage the committee to push for higher public reporting. From our point of view, if we moved to public country-by-country reporting, that would probably solve a lot of the issues for the multinational corporations with over \$1 billion of revenue. It would be

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23 Australian Accounting Standards Board, *Application of Tiers of Australian Accounting Standards*, AASB Standard 1053, June 2010, p. 12.

24 Mr Michael West, *Committee Hansard*, 4 July 2017, p. 18.

25 Mr Michael West, *Committee Hansard*, 4 July 2017, p. 18.

good to have the general purpose accounts for companies with lower revenue levels than that.<sup>26</sup>

4.34 In July 2017, Mr West commented that little progress had been made in reforming the accounting standards regime:

The last time we were here in this room in 2015, the AASB [Australian Accounting Standards Board], which is stacked with big four [accounting firm] people, were completely dumbstruck when questions were asked of them about this special purpose accounting. They said that they would go away and do something about it and come back. Well, they have never done anything about it. They are completely compromised.<sup>27</sup>

4.35 In response, the AASB has undertaken research since its appearance before the committee in 2015 into reporting requirements in other major economic jurisdictions. That research has not found any other jurisdiction has the option of lodging special-purpose financial statements:

Our research has concentrated on, say, about 10 jurisdictions—the major economic jurisdictions around the world—and they don't have a regime similar to our special-purpose financial statements, so it would be unlikely that other jurisdictions would have such.<sup>28</sup>

4.36 The AASB also noted that the large company thresholds—revenue of \$25 million and assets of \$12.5 million—result in a range of proprietary companies being captured by requirements for public reporting according to accounting standards. As such, the AASB was cognisant of the potential regulatory burden of imposing general purpose financial statements on all large companies:

Our view is that those current criteria and thresholds are likely to result in some entities having an unnecessary regulatory burden if they were asked to produce general-purpose financial statements.<sup>29</sup>

4.37 However, Mr Jason Ward from the Tax Justice Network Australia argued that Australian subsidiaries of very large multinational companies should not be absolved from filing general purpose financial accounts:

...Exxon is not alone in that lots of subsidiaries of multinational companies use reduced disclosure requirements, which allow them to not comply fully with full provisions of Australian accounting standards...If a company is over a certain scale, I think they should be obliged to provide full compliance with the complete set of Australian accounting standards.<sup>30</sup>

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26 Dr Mark Zirnsak, *Committee Hansard*, 22 August 2017, p. 7.

27 Mr Michael West, *Committee Hansard*, 4 July 2017, p. 15.

28 Mr Clark Anstis, Australian Accounting Standards Board, *Committee Hansard*, 22 August 2017, p. 40.

29 Ms Kris Peach, Australian Accounting Standards Board, *Committee Hansard*, 22 August 2017, p. 39.

30 Mr Jason Ward, Tax Justice Network Australia, *Committee Hansard*, 14 March 2018, p. 18.

4.38 Transparency concerns around the usefulness of financial statements also extend to non-consolidated holding companies. According to Mr West:

The holding company thing is this: you can have a whole lot of companies—like Glencore does, say, in Australia or Goldman Sachs—but they are not consolidated. So if the company at the top of the tree is not consolidated, that means you cannot rely on all the other financial information being grouped into one company. Effectively, they can just put whatever they like in there. They do not have to consolidate it. It does not mean anything.

...

You cannot reconcile what their interests are. You cannot say, 'That's how much tax they paid here'.<sup>31</sup>

4.39 Mr West was also critical of the auditor's and regulator's role in questioning the legitimacy of financial reports:

These accounts, literally, are signed off by the big four [accounting firms]. They do not make sense. There are holes in them everywhere. I continually point them out but I can only go so far. I will talk to Ernst & Young or whoever it is—a polite 'no comment'. I will talk to the company and it is a polite 'no comment'. Nobody ever talks about tax. They just never go there. I can go as hard as I like, but nobody is going to give their side of the story. But nobody does it at the regulator.<sup>32</sup>

#### *Committee view*

4.40 The committee continues to be concerned that multinationals and other corporate entities are using accounting standards to obscure public scrutiny of their activities. The committee acknowledges that making all corporate entities file general purpose financial statements above the current thresholds (revenue of \$25 million or assets of \$12.5 million) may represent an unnecessary regulatory burden.

4.41 However, the committee believes it is in the public interest that all companies with significant economic activity should be required to lodge general purpose financial accounts with the ASIC. To this end, the committee believes that consideration should be given to aligning the threshold for requiring mandatory general purpose financial statements with thresholds used by other transparency measures, such as the \$100 million income threshold for the *Report of entity tax information*.

### **Recommendation 5**

**4.42 The committee recommends that the government require all companies, trusts and other financial entities with income above a certain amount to lodge general purpose financial statements with the Australian Securities and Investments Commission.**

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31 Mr Michael West, *Committee Hansard*, 4 July 2017, p. 21.

32 Mr Michael West, *Committee Hansard*, 4 July 2017, p. 17.

### *Access to corporate information (including accounting statements)*

4.43 While making multinationals file appropriate accounting statements is one factor of transparency and disclosure, another factor is the ability of interested parties, and the general public, to be able to access this information easily and affordably. Mr West highlighted that:

...it is fairly well accepted by economists...that if everybody has access to information, markets work better.<sup>33</sup>

4.44 While ASIC has made company information accessible through the internet, it charges fees for accessing this information. According to Mr West, who is familiar with the process and costs associated with accessing corporate information from ASIC:

You have to pay 38 bucks a pop from ASIC to get a set of financial statements, and if you want to see what the parent is you have to pay another \$9 or \$19 to ASIC to get hold of one year's set of accounts. It is a costly business. There is a transparency issue there with how much it costs to find this stuff.<sup>34</sup>

4.45 Even the Australian Accounting Standards Board cites the cost of accessing company information from ASIC as a barrier to undertaking research on accounting standards:

The other issue...is that with ASIC you do need to pay a public fee to get that information, so that also makes it much more complicated for academics to be prepared to do the research that's necessary for us.<sup>35</sup>

4.46 A number of submissions to the consultation paper for increasing transparency of the beneficial ownership of companies also noted the fees charged by ASIC to access public information. For example, Associate Professor David Chaikin provided the following commentary:

Australia is notorious in its policy of imposing high charges and fees to access corporate information. For more than 20 years it has been far cheaper to investigate foreign incorporated companies (eg companies registered in the cantons of Switzerland) than Australian companies, since many foreign countries do not charge fees on electronically accessing information on their corporate registries.<sup>36</sup>

4.47 Similarly, the Institute of Public Accountants commented on the effect of ASIC's fee structures on easily accessing public information:

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33 Mr Michael West, *Committee Hansard*, 4 July 2017, p. 19.

34 Mr Michael West, *Committee Hansard*, 4 July 2017, p. 17.

35 Ms Kris Peach, Australian Accounting Standards Board, *Committee Hansard*, 22 August 2017, p. 39.

36 Dr David Chaikin, *Submission on Increasing Transparency of the Beneficial Ownership of Companies*, 13 March 2017, p. 4.

The current registers maintained by the corporate regulator, the Australian Securities and Investments Commission (ASIC), can only be accessed if users of this information are able to pay the prescribed fee set by the Commission. This makes access to information expensive, and in some cases difficult, for users to obtain all of the information they may require when they wish to identify the parties who have ownership of an entity.<sup>37</sup>

4.48 In the United Kingdom, the central register of business information, Companies House, has made all of its digital data available free of charge from the second quarter of the 2015 calendar year. According to the press release announcing this change:

This will make the UK the first country to establish a truly open register of business information.

...it will be easier for businesses and members of the public to research and scrutinise the activities and ownership of companies and connected individuals. Last year (2013/14), customers searching the Companies House website spent £8.7 million accessing company information on the register.

This is a considerable step forward in improving corporate transparency; a key strand of the G8 declaration at the Lough Erne summit in 2013.<sup>38</sup>

4.49 Mr West commented on developments in the United Kingdom:

Instead of lifting the charges on financial information...they took the charges out of the equivalent of ASIC over there...and now everybody can get everything for free. They democratised the information. ASIC has the highest charges in the world; the rest of the world has been going to nothing, to zero.<sup>39</sup>

4.50 The committee also notes that New Zealand does not charge to access public information about companies through the New Zealand Companies Register.

4.51 In Australia, the issue of how government data can best be used for public benefit has been considered extensively over the past decade. The *Principles on Open Public Sector Information* 'rest on the democratic premise that public sector information is a national resource that should be available for community access and use'.<sup>40</sup> However, *Principle 7: Appropriate charging for access* notes that the *Freedom of Information Act 1982* requires agencies to facilitate access to information at the

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37 Institute of Public Accountants, *Submission on Increasing Transparency of the Beneficial Ownership of Companies*, p. 2.

38 The Rt Hon Dr Vince Cole, Business Secretary, and The Rt Hon Lord Maude of Horsham, Minister for the Cabinet Office, *Free Companies House data to boost UK economy*, Press Release, 15 July 2014, <https://www.gov.uk/government/news/free-companies-house-data-to-boost-uk-economy> (accessed 29 November 2017).

39 Mr Michael West, *Committee Hansard*, 4 July 2017, p. 19.

40 Office of the Information Commissioner, *Principles on open public sector information*, <https://www.oaic.gov.au/information-policy/information-policy-resources/principles-on-open-public-sector-information> (accessed 30 November 2017).

lowest reasonable cost but other acts also authorise charges for specific documents or information access.<sup>41</sup>

4.52 More recently, the Productivity Commission (PC) considered ASIC's pricing regime for company searches as 'commercial' noting that an estimated \$60 million in revenue annually came from this source alone.<sup>42</sup> Indeed, ASIC overall is a 'cash cow' for government to the tune of over half a billion dollars in 2016–17 by collecting over \$865 million in revenue under the powers of relevant acts while receiving less than \$350 million in government funding.<sup>43</sup> If revenue neutrality within ASIC was an imperative, then a modest ten per cent increase in other ASIC fees could more than cover the cost of making public information available at no charge.

4.53 At the Australian Information Industry Association Navigating Analytics Summit 2014, the then Communications Minister, the Hon. Malcolm Turnbull MP, was asked whether he supported a rollback of government paywalls, citing the example of ASIC, to make data more freely available. In response, the minister commented that:

I have to say as a matter of principle, I don't think the government should be charging the public for data. Now I have to be frank with you, I think it is really regrettable that ASIC's data is behind a paywall. These are tough and troubled times from a budgetary point of view and there would be all sorts of contractual issues but really the productivity benefits from making data freely available are so much greater than whatever revenues you can generate from them. So our goal is to make that data, wherever possible as I said, accessible and free.<sup>44</sup>

4.54 A report on the broader impact of ASIC's high search fees for company information concluded that:

...the level of public accountability for some companies is restricted to corporate regulators and tax authorities. While these institutions may be efficient and highly competent in apply their respective legislative functions, the impetus for change has mainly come from public actions and detailed analysis.

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Therefore this report recommends that Australia abolishes (or reduce to a nominal amount) fees for access to financial statements (with a financial report document) entirely. Also recommended is that Australia adopts a

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41 Office of the Information Commissioner, *Principles on open public sector information*, <https://www.oaic.gov.au/information-policy/information-policy-resources/principles-on-open-public-sector-information> (accessed 30 November 2017).

42 Productivity Commission, *Data Availability and Use*, Inquiry Report No. 82, 31 March 2017, p. 354 citing Mr Michael West, *ASIC Plot: Corporate Database Close to Sale*, 16 August 2016.

43 Australian Securities and Investments Commission, *Annual Report 2016–2017*, pp. 126 & 132.

44 The Hon. Malcolm Turnbull MP, Minister for Communications, Address to the Australian Information Industry Association Navigating Analytics Summit, 20 March 2014, <https://www.youtube.com/watch?v=3kEiHx6JU8s> (accessed 30 November 2017).

more rigorous reporting regime along the lines of the U.K., with little room for exemptions, particularly for the subsidiaries of foreign MNE's. Further, documents should be filed electronically in a searchable format as has long been adopted in other jurisdictions, such as the United States. These reforms would put Australia at the forefront of the global campaign to improve corporate transparency and as such to limit corporate tax avoidance.<sup>45</sup>

#### *Committee view*

4.55 In the interests of greater transparency and the value that public scrutiny can bring to society, the committee considers that there is merit to providing free public access to company information that is routinely collected by ASIC as part of its regulatory duties.

4.56 The committee notes that any reform to make company information available at no cost will reduce ASIC's revenue base but this shortfall could either be absorbed (given the substantial contribution ASIC makes to government revenue) or made up for by relatively modest increases to other fees charged by ASIC. The committee recommends that the government undertake an independent and public review of ASIC's statutory fees and charges to explore options for eliminating fees to access company information.

#### **Recommendation 6**

**4.57 The committee recommends that the government undertake an independent, public review of the Australian Securities and Investments Commission's statutory fees and charges to explore options for reducing or eliminating fees to access company information, including financial statements.**

#### *Public access to Country-by-Country reports*

4.58 Country-by-Country reports allow tax authorities to better understand how multinational operations are structured and accounted for tax purposes. While this information is extremely useful in allowing tax authorities to determine the tax liabilities of multinationals, there could also be greater benefits from making some, or all, of this information public available.

4.59 Associate Professor Antony Ting made a case for making aspects of CbC reports available:

...maybe we should think about whether we can make certain information in the CbC reports public, because making it public...will improve public awareness and put pressure on multinationals to react and change their behaviour.<sup>46</sup>

4.60 Dr Zirnsak also argued for the public release of CbC reports:

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45 GetUp! and the Fair Tax Foundation, *Hidden Cost: The \$46.88 Fee That Costs Us \$8 Billion A Year*, pp. 35 and 37, <https://www.documentcloud.org/documents/4435122-Hidden-Cost-Report1-2018-GetUp-and-Fair-Tax.html> (accessed 11 May 2018).

46 Associate Professor Antony Ting, *Committee Hansard*, 4 July 2017, p. 24.

It probably would be better though...if the country-by-country reports were to be made public as they were being produced. Then we would have a real tool to assess what the companies are doing publicly or if we were seeing companies with very substantive activities here parking a lot of their profits in Singapore, or Ireland, of the Netherlands or other places that we know are notorious for assisting corporations with cheating on their taxes in the places they should be paying them.<sup>47</sup>

4.61 Associate Professor Ting also noted that the European Union currently has a proposal to make excerpts of CbC reports public:

The European Union has a proposal before the council to make those CbC reports public. Of course, there is a provision to say that companies can identify certain information and say that it is commercially confidential and should not be disclosed, and if the tax office agrees, then that information will be kept secret. So, that is one option to balance the objective of transparency and privacy.<sup>48</sup>

4.62 In July 2017, the European Parliament approved, in its first reading, the report on the proposal for public CbC reporting. The report proposes to amend the proposal to broaden the scope of reporting obligations for significant multinationals with undertakings or branches within the EU and provides for exemptions in the case of commercially sensitive information. In addition, the public CbC reporting requirements would be more aligned to the non-public CbC reporting requirements under the OECD BEPS Action 13 on CbC reporting. The matter was referred back to committees for inter-institutional negotiations with a reporting period of four months. If the proposal for CbC reporting is to be implemented, it will need to be adopted by the Council, following which member states would have to transpose the text into national legislation. It is unclear whether the proposal will proceed as some Member States have made negative comments.<sup>49</sup>

4.63 In September 2016, the UK gave the relevant minister statutory provisions—in the form of regulations or orders—which would enable them to switch on the requirement for public disclosure of tax filings. The UK requires the publication of a multinational's group tax strategy; this additional amendment allows ministers to compel companies to also make their CbC reports public.<sup>50</sup>

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47 Dr Mark Zirnsak, *Committee Hansard*, 22 August 2017, p. 2.

48 Associate Professor Antony Ting, *Committee Hansard*, 4 July 2017, p. 24.

49 EY, *European Parliament votes in favor of public Country-by-Country reporting in first reading*, <http://www.ey.com/gl/en/services/tax/international-tax/alert--european-parliament-votes-in-favor-of-public-country-by-country-reporting-in-first-reading> (accessed 2 November 2017).

50 Bloomberg BNA, *U.K. opts for public country-by-country reporting*, <https://www.bloomberg.com/professional/blog/u-k-opts-public-country-country-reporting/> (accessed 2 November 2017).

4.64 Public access to CbC reports would allow for independent analysis of multinational structures and activities, and provide data for a more informed assessment of the potential corporate tax gap:

... if we wanted to be able to do that kind of analysis, we'd need more data to be public. That's why one of our ongoing asks is that the high-level, country-by-country reports be made public, because that would allow that. And, globally, that would be ideal, because it would then allow us to see where companies are really doing their business, where their assets and their employees are, and how they are divvying up their profits, and it would give you a sense of: 'Are they parking their profits in the places where they are really doing business?' All we can judge at this stage is: certainly companies are agreeing to park more profit here in Australia, which seems to match the footprint of where they are really doing business. That is great, but it's hard to know whether that is legitimately how much they should be parking here or to what degree they are still gaming the system and shifting it, while aggressively asserting that they are in compliance with the law.<sup>51</sup>

#### *Committee view*

4.65 The committee notes that CbC reports are intended to assist tax authorities to better understand how multinationals structure their operations across jurisdictions. In addition, the committee also appreciates that for CbC reports to be useful, they will contain some commercially sensitive information.

4.66 However, the committee is also of the view that making excerpts of CbC reports publicly available has the potential to provide the wider community with more insight than they currently have into the cross jurisdictional structure of multinationals. This would help inform academics, journalists and civil society more broadly about multinational structures, and contribute to a more informed debate about what level of tax should be paid by multinational corporations.

4.67 This inquiry's first report, *You cannot tax what you cannot see*, recommended making excerpts of CbC reports public. The committee's thinking on this issue has not changed and, accordingly, the committee again recommends that certain high level data from CbC reports should be made publicly available free of charge. This would include high level data on how much tax is paid in jurisdictions the firm operates in, the number of employees, and related material.

#### **Recommendation 7**

**4.68 The committee recommends that excerpts of Country-by-Country reports be made publicly available free of charge. Information to be released from Country-by-Country reports would include, at a minimum, high level data on how much revenue is collected and tax is paid in jurisdictions the firm operates in, and the number of employees.**

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51 Dr Mark Zirnsak, *Committee Hansard*, 22 August 2017, p. 5.

### *Tax Transparency Code*

4.69 As noted in chapter 2, a tax transparency code (TTC) has been introduced for large and medium businesses from the 2015–16 financial year. Adoption of the TTC is voluntary and intended to complement Australia’s existing tax transparency measures. The TTC is designed to encourage greater transparency within the corporate sector, particularly by multinationals, and to enhance the community's understanding of the corporate sector's compliance with Australia's tax laws.

4.70 While the intentions of the TTC are laudable, the committee is disappointed that very few companies have chosen to comply with the code. As of 9 May 2018, 56 TTC reports were available for 2015–16, 52 reports were available for 2016–17, and 26 reports were available for 2017–18.<sup>52</sup> This is despite a corporate population of around 1400 large groups with turnover of greater than \$250 million and at least a further 16 000 medium groups with a turnover between \$10 million and \$250 million. This reflects a take-up rate of less than one per cent of all large and medium groups.

4.71 At the hearing on 22 August 2017, a number of multinationals were questioned as to why they had not decided to participate with the voluntary TTC.

4.72 Mr Kerry Purcell, Managing Director of IBM Australia, indicated his organisation had no intention of providing information through a voluntary TTC:

It does have a level of confidentiality and disclosure that I'm not comfortable with.

...

As I understand it, it provides more information on our business than I would like to provide to our competitors.<sup>53</sup>

4.73 While it initially appeared that Microsoft would be part of the voluntary TTC when it was announced, evidence from their appearance showed that this was not the case:

I think there was some confusion in terms of what we agreed to. From my perspective, as a multinational company, we try and do things from a multilateral perspective. So to the extent that Australia acts on its own and has a requirement for voluntary transparency which is different from other countries, we would rather not get into that. So we're waiting to see where you guys land, in terms of what the government of Australia wants to do, before we commit to whether we're going to participate or not.<sup>54</sup>

4.74 The ATO shared its view on companies providing information through the TTC:

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52 *Voluntary Tax Transparency Code*, <http://data.gov.au/dataset/f71709a8-2eeb-4592-ad1f-443f7f520186> (accessed 9 May 2018).

53 Mr Kerry Purcell, IBM Australia, *Committee Hansard*, 22 August 2017, p. 45.

54 Mr Daniel Goff, Microsoft Corporation, *Committee Hansard*, 22 August 2017, p. 20.

...there tends to be...a predominance of Australian based multinationals who have signed up...I think for foreign companies it is probably seen as something a bit different and that is relevant to Australia, and, 'We might not be actually of such a size to their global operations to particularly warrant the attention'...A large proportion of BCA [Business Council of Australia] members have committed to signing and publishing, and I hope that they encourage their foreign members to also get on board.<sup>55</sup>

4.75 Specifically in relation to ExxonMobil Australia's compliance with the TTC, Mr Lance McCallum from the Australian Council of Trade Unions commented that:

In my view, when I looked at Exxon's voluntary disclosure under the code, it was consistent with their behaviour in terms of not meeting their obligations under the existing laws, and I don't think that a voluntary code goes anywhere near far enough to bringing these kinds of companies to heel.<sup>56</sup>

#### *Committee view*

4.76 The committee notes that it was concerned about the uptake of a voluntary tax transparency code when it was first being developed in 2015:

The committee recognises that companies may seek to delay the development and implementation of the public transparency code, or may simply refuse to comply where it is not in their interests. Rather than spending two years developing a voluntary disclosure code, the committee considers that the wider community has a right to know about tax affairs of all corporations operating in Australia.<sup>57</sup>

4.77 The committee considers that it is obvious that most large corporations, particularly multinationals, are not committed to voluntary disclosure of tax affairs. As such, the committee again recommends that the government introduce a mandatory tax transparency code for all large and medium corporates based on provisions set out in the existing voluntary tax transparency code.

### **Recommendation 8**

**4.78 The committee recommends that the existing voluntary tax transparency code be converted, as soon as practicable, to a mandatory code for all large and medium corporations operating in Australia, including subsidiaries of multinational corporations.**

#### *Greater information on tax settlements*

4.79 Greater information about settlements of large disputes concluded by the Australian Taxation Office also has the potential to increase public scrutiny and give

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55 Mr Chris Jordan, Australian Taxation Office, *Committee Hansard*, 22 August 2017, p. 51.

56 Mr Lance McCallum, Australian Council of Trade Unions, *Committee Hansard*, 14 March 2018, p. 15.

57 Senate Economics References Committee, *Corporate tax avoidance: Part I—You cannot tax what you cannot see*, August 2015, p. 54.

confidence to the wider community that tax administrators are conducting activities that are consistent with community expectations.

4.80 At the committee's last hearing in March 2018, Mr Jason Ward commented that:

If there's a tax settlement that has national implications and is over a certain scale, the public really has a right to know, and I think that trumps a corporation's right to privacy over its financial matters.<sup>58</sup>

4.81 This issue was raised in the inquiry's first report and the committee notes that no action has been taken to establish a public register of tax avoidance settlements.<sup>59</sup>

4.82 The committee reiterates its position that tax settlement information should be made publicly available but considers that a more streamlined approach could be to incorporate high-level anonymised information on settlements greater than \$50 million into the ATO's Annual Report. The committee believes that the annual report process is an appropriate mechanism for the ATO to communicate information, such as the number of settlements and their value, on its enforcement activities with the community and could provide a mechanism by which it could publicly and regularly identify the character and strategies of the aggressive tax minimisation practices it is targeting.

### **Recommendation 9**

**4.83 The committee recommends that the Australian Taxation Office include a dedicated section on the number and value of significant tax settlements of \$50 million or greater in its annual report.**

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58 Mr Jason Ward, Tax Justice Network Australia, *Committee Hansard*, 14 March 2018, p. 19.

59 Senate Economics References Committee, *Corporate tax avoidance: Part I—You cannot tax what you cannot see*, August 2015, p. 56.