

## Coalition Senators Additional Comments

### General comments

1.1 Coalition Senators note the majority report and the issues raised in the serious matter of corporate tax avoidance.

1.2 Coalition Senators note that corporate tax avoidance is a critical issue.

1.3 Coalition Senators also note the need to continue the process to strengthen Australia's crackdown on corporate tax avoidance.

1.4 Coalition Senators however note that some comments in the majority report represent an overreach in some of its criticisms.

1.5 Coalition Senators note the significant reforms by the government to crackdown on corporate tax avoidance and note that the government has taken significant steps to crack down on corporate tax avoidance since being elected in 2013.

1.6 Coalition Senators note the success of the Multinational Anti-Avoidance Law (MAAL) and the Diverted Profits Tax (DPT), both of which have been integral parts of the government's additional \$7 billion a year in sales revenue coming into the tax net.

1.7 Coalition Senators commend the ATO for its diligent efforts to combat corporate tax avoidance.

1.8 Coalition Senators are very critical of this inquiry, and want to emphasise its unnecessarily protracted nature.

1.9 By contrast, Coalition Senators note that in the four years it has taken to produce this report, which contains precious little new insight, the Government has been getting on with the job in addressing multinational tax avoidance and tax system integrity.

### Chapter 3—“Where to from here?” (recommendations 1-2)

1.10 Coalition Senators do not support Recommendation 1 of the committee's report, noting that the Turnbull Government is already strengthening Australia's thin capitalization rules, which limit the amount of debt deductions that multinational entities can claim in Australia. The measure announced in the 2018-19 Budget will require companies to align the value of their assets for thin capitalization purposes with the value included in their financial payments.

1.11 Recommendation 1 would instead fundamentally change the thin capitalization rules, including removing the existing 'arms-length' test. This is at odds with findings in a 2014 Board of Tax review which supported the retention of the test.

1.12 The board found that without the test, many major projects may be at risk. This would have significant impact on future investment, and the viability of certain projects that may require debt financing but are unable to meet the recommended worldwide gearing ratio test.

1.13 Coalition Senators note that the Government’s tax integrity reforms have already resulted in an additional \$7bn a year in sales revenue coming into the tax net. These included reforms like establishing a Tax Avoidance Taskforce in the ATO on 1 July 2016, the Diverted Profits Tax and the Multinational Anti-avoidance Law. They also included:

- Legislating anti-hybrid rules, a key BEPS recommendation;
- signing the OECD Multilateral Instrument on 7 June 2017;
- doubling the penalties for multinationals avoiding tax;
- increasing penalties for breaches of tax reporting obligations by multinationals;
- implementing OECD recommendations for Country-by-Country Reporting to give the ATO greater access to multinational transfer pricing information; and
- aligning Australia’s transfer pricing rules with the latest OECD guidelines.

1.14 Coalition Senators wish to remind the Senate that Labor opposed many of these reforms, but the Government persisted, achieved legislative passage and delivered results. As a result of this legislation, the ATO has raised \$5.2 billion from large multinational companies.

1.15 Coalition Senators wish to use this inquiry as an example to highlight how the Labor Party is headlines over action. Their approach puts at risk investment and jobs.

1.16 By contrast, Coalition Senators wish to draw attention to the work of the Government, which is providing the requisite tools to the ATO so that it can address tax compliance by multinational companies.

1.17 Coalition Senators reject the summary from Professor Richard Vann that the impact of governments has been akin to “much heat, little light so far”. By contrast, Coalition Senators feel that the government has been successful in applying pressure on multinational corporations that try to avoid paying tax in Australia, and as a consequence many of the companies in question have changed how they report taxable activities in Australia.

1.18 Coalition Senators note recommendation 2 and acknowledge the importance of maintaining the integrity of the corporate tax base.

#### **Chapter 4—“Trumpeting transparency” (recommendations 3-9)**

1.19 Coalition Senators note that the Government has legislated to ensure that companies are required to provide the Australian Tax Office with the information it requires to determine the right amount of tax that companies should pay.

1.20 Coalition Senators agree that transparency is important to ensure that companies pay the right amount of tax, however a balance must be struck between taxpayer confidentiality and the need for any information made public to be well understood and relevant.

1.21 Coalition Senators note that the Government is pressing ahead with tougher rules to prevent multinationals from avoiding tax, and will increase transparency and improve enforcement by giving tax whistleblowers greater protection.

1.22 With reference to Recommendation 4, Coalition Senators note the Government's commitment to improving transparency around who owns, controls and benefits from companies, so as to assist relevant authorities in combating illicit activities including tax evasion, money laundering, bribery, corruption and terrorism financing.

1.23 Further to Recommendation 4, Coalition Senators note that as part of the Open Government Partnership National Action Plan, the Government consulted publicly on improving the transparency of beneficial ownership information for all companies, both public and private. Coalition Senators acknowledge that the Government is currently considering how best to implement this reform.

1.24 With reference to Recommendation 5, Coalition Senators note that the Australian Accounting Standards Board (AASB) is currently consulting on how to introduce the International Accounting Standards Board's revised Conceptual Framework for Financial Reporting into Australia and improve the consistency, comparability and transparency of financial reports prepared in accordance with the Australian Accounting Standards. The consultation paper addresses the special purpose financial statement problem cause by Australia's unique accounting requirements that allow entities to self-assess as 'non-reporting entities'.

1.25 Coalition Senators recommend that the Government defer consideration of Recommendation 5 to enable it to take into account any matters arising of AASB's consultation.

1.26 Coalition Senators do not support Recommendation 7 of the committee's report. The OECD's Base Erosion Profit Shifting (BEPS) recommendation on country-by-country reports explicitly states that jurisdictions should enforce legal protections of the confidentiality of the reported information.

1.27 Coalition Senators note that the purpose of country-by-country reporting is to increase revenue authorities' access to and understanding of the global tax position of multinational corporations. The country-by-country reporting program allows the tax administrations of participating countries, including Australia, to leverage the information contained in country-by-country reports to better identify potential tax risks – particularly in respect of transfer pricing matters.

1.28 The Australian Taxation Office condemns the proposal that country-by-country documentation be publicly released. The Commissioner of Taxation stated in his evidence before Senate Estimates on 25 October 2017:

"The arrangement, through the OECD - we signed a multilateral agreement. That agreement is based on the information that is exchanged. The information is to be kept within the confines of the relevant tax authorities. If people call for this to be made public - no-one would give us anything, so there'd be nothing to make public. We've signed up to an international agreement, as with the others, to say that this will occur as long as the information is only provided to tax authorities"

1.29 Coalition Senators note the immense value of this country-by-country reporting, and reaffirm its transformative power. As the Commissioner of the Australian Taxation Office noted in his evidence before the Senate Economics Legislation Committee at Estimates of 17 March 2017:

“Our people think this is of enormous benefit to get the level of detail that we’ve never had before in a proactive way.... this is transformational in our international tax work”

1.30 Coalition Senators note that Australia is bound by an international multilateral agreement. As noted by Deputy Commissioner, International, Mr Mark Konza in evidence before the Economics Legislation Committee at Estimates of 28 February 2018:

“We’re a party to a global deal where all the countries got together, examined the issue and agreed that these files would be transferred between the countries, as long as confidentiality was maintained. For Australia to move unilaterally to publish them would be to break a deal that we’ve made as a country.”

1.31 Coalition Senators do not support public release of information gained through country-by-country reporting.

## **Chapter 5—“Offshore oil and gas” (recommendations 10-13)**

1.32 Coalition Senators note that Recommendations 11-13 ought not to be considered until after the Government’s response to the Callaghan Review into the Petroleum Resources Rent Tax.

### **Other reform comments**

1.33 Coalition Senators wish to draw attention to the 2018-19 Budget, in which the Government announced further measures to ensure businesses are paying their fair share of tax. These include:

- Strengthening the rules that limit interest deductibility to stop companies shifting profits out of Australia, including requiring companies to align the value of their assets with the value included in their financial statements; and
- Broadening the scope of large multinationals being subject to the Multinational Anti-Avoidance Law (MAAL) and the Diverted Profits Tax (DPT)

1.34 Coalition Senators also note that the 2018-19 Budget strengthens the definitions of a large multinational (or Significant Global Entity) to ensure that it operates as intended. This will ensure that large multinational businesses that are ultimately owned by private entities or investment entities are not inadvertently excluded from the application of tax integrity rules such as the DPT and MAAL.

1.35 Coalition Senators recognise that globalisation and digitisation of the economy present challenges for the international and Australian tax frameworks. Under existing frameworks, digital businesses can have a significant economic presence in Australia without making a significant contribution to tax revenues here. Coalition Senators have observed the Government’s commitment to making sure that

digital businesses pay their fair share of tax in Australia and its active engagement with the OECD in exploring options for taxing the digital economy. Coalition Senators understand that the Government will shortly be consulting on recent international developments and how digital businesses are taxed in Australia.

1.36 Furthermore, Coalition Senators note that the Government is introducing tough new laws to prevent multinationals from avoiding tax by addressing hybrid mismatch arrangements.

1.37 Whatever mechanisms are identified to address these issues and concerns, consideration must be given to ensure that any requirement does not unreasonably add burden and red-tape to businesses, noting the majority of businesses are law-abiding corporations. Accordingly any disclosure obligation built into the reporting process should consistently capture any forms of serious illegal behaviour, not just corporate tax avoidance in isolation. It would not be best regulatory practice to impose red-tape on law-abiding firms requiring them to establish internal processes to prevent remote likelihood events.

**Senator Jane Hume**  
**Deputy Chair**

**Senator the Hon Ian Macdonald**  
**Senator for Queensland**

