

Chapter 1

Introduction and overview of the bill

1.1 The Tax and Superannuation Laws Amendment (Better Targeting the Income Tax Transparency Laws) Bill 2015 (the bill) was introduced by the government into the House of Representatives on 20 August 2015. On 10 September 2015, the Senate referred the provisions of the bill to the Senate Economics Legislation Committee for inquiry and report by 12 October 2015.

1.2 The bill, which contains one schedule, proposes to amend the *Taxation Administration Act 1953* (TAA 1953) so that Australian-owned private companies are exempt from the requirement for the Commissioner of Taxation (Tax Commissioner) to publish certain tax information in relation to corporate tax entities that report total income equal to or above \$100 million for an income year.

1.3 The proposed amendments reverse the changes made in June 2013 to the TAA 1953 that require the Tax Commissioner to publish certain information about the tax affairs of corporate tax entities that have a total income equal to or exceeding \$100 million for an income year. According to the Explanatory Memorandum, the changes:

...[will] ensure that the public release of information by the Commissioner of Taxation under the income tax transparency laws does not affect the privacy and personal security of the ultimate owners of Australian-owned private companies. It also removes the risk that the release of the information will harm Australian-owned private companies' market environments.¹

1.4 Under the current income tax transparency laws contained in section 3C of the TAA 1953, the Tax Commissioner is required to publish the following information relating to a relevant corporate tax entity stipulated in subsection 3C(3):

- name and Australian Business Number;
- total income;
- taxable income or net income (if any); and
- income tax payable.

1.5 Under section 292 of the *Corporations Act 2001*, the requirement to report certain tax information and income in annual financial reports already applies to public companies, large proprietary companies and registered schemes.

1 Explanatory Memorandum, *Tax and Superannuation Laws Amendment (Better Targeting the Income Tax Transparency Laws) Bill 2015*, p. 9.

Proposed amendments

1.6 Item 1 of the bill narrows the application of section 3C by excluding Australian-owned private companies. This amendment is achieved by inserting the following conditions in paragraph 3C(1)(b):

- the company must be a resident private company for the income year;
- the company must not be the wholly-owned subsidiary of a foreign corporate group; or
- the company must not have a level of foreign shareholding greater than 50 per cent.²

1.7 The laws will continue to apply to multinational companies operating in Australia and Australian public companies.

1.8 Item 2 of the bill states that the amendment made in section 3C applies from the 2013–14 income year unless the Tax Commissioner has already made publicly available the information about the entity under subsection 3C(2) of the TAA 1953. The Tax Commissioner is expected to release the first publication under the laws in late 2015.³

1.9 The terms used in proposed subsection 3C(1) carries the same meaning as those used in the *Income Tax Assessment Act 1997* (ITAA 1997).

Conduct of the inquiry

1.10 The committee advertised the inquiry on its website, and wrote directly to a range of organisations inviting written submissions. The committee received 9 submissions, which are listed at Appendix 1. On 22 September 2015, the committee held a public hearing in Canberra as part of the inquiry. A list of witnesses is at Appendix 2.

1.11 The committee thanks all who contributed to the inquiry.

Financial implications

1.12 According to the Explanatory Memorandum, the measures in the bill will have nil financial impact.

Human rights implications

1.13 The bill was considered by the Senate Standing Committee for the Scrutiny of Bills, which had no comment to make on the proposed legislation.⁴ The Parliamentary

2 Explanatory Memorandum, p. 13.

3 Explanatory Memorandum, p. 10.

4 Scrutiny of Bills Committee, Alert Digest, No.9 2015, p. 23,
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Alerts_Digests/2015/index (accessed 17 September 2015).

Joint Committee on Human Rights also considered the bill and had no concerns around human rights issues.⁵

1.14 The Explanatory Memorandum went into greater detail about any human rights implications relating to the bill. According to the Explanatory Memorandum, the bill will promote human rights through the prohibition on interference with privacy contained in Article 17 of the *International Covenant on Civil and Political Rights*.

1.15 While the current income tax transparency laws only apply to corporate entities, the disclosure of information pertaining to closely held private companies 'effectively interferes with the privacy of their owners', and may interfere with individuals' rights to privacy and rights to legal protection from such interference. Accordingly, exempting Australian-owned private companies from the laws 'reflects that the current interference is not reasonable, necessary or proportionate to achieving the objectives of the laws'.⁶

1.16 For the above reasons, the bill promotes human rights and is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Background to the bill

1.17 The current income tax transparency laws requiring the disclosure of the information contained in subsection 3C(3) of the TAA 1953 were enacted by the *Tax Laws Amendment (2013 Measures No.2) Act 2013* on 29 June 2013. These laws were introduced in the context of a growing and shared concern by the former government and internationally by member countries of the G20 and most of the OECD, that some large corporate entities were engaged in profit shifting, with the consequential effect of eroding a country's tax base.

1.18 These income tax transparency measures took place against a background of international developments in relation to tax transparency: the G8's commitments to take actions to improve tax transparency standards in the extractive sector and to develop common reporting standards; and, the OECD's Base Erosion and Profit Shifting (BEPS) plan to address tax avoidance by multinational companies.⁷

5 Parliamentary Joint Committee on Human Rights, Examination of legislation in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, *Twenty-seventh report of the 44th Parliament*, 8 September 2015, p. 1, http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2015/Twenty-seventh_report_of_the_44th_Parliament/c01 (accessed on 17 September 2015).

6 Explanatory Memorandum, p. 16.

7 See Parliamentary Library, 'Tax and Superannuation Laws Amendment (Better Targeting the Income Tax Transparency Laws) Bill 2015', Bills Digest No. 24 2015-16, 16 September 2015, pp. 4-5, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=BillId_Phrase%3A%22r5518%22%20Dataset%3Abillsdgs;rec=0 (accessed 17 September 2015).

1.19 Accordingly, the introduction of current income tax transparency laws were intended to: improve the transparency of the business tax system; discourage aggressive tax practices; and, inform public debate about corporate tax policy.⁸

1.20 On 29 May 2013, the then Assistant Treasurer, in his second reading on the bill, stated:

Policy makers and the Australian public should have more transparency around the levels of tax being paid by large and multinational businesses in Australia to allow for an informed debate about the efficiency and equity of our tax system. This is particularly the case when there are increasing demands for the government to provide evidence about the challenges that base erosion and profit shifting present to the sustainability of our corporate tax system. By increasing the transparency of our business tax system, the government will ensure that the public is well informed about the contributions made by large corporations. This is also intended to discourage aggressive tax minimisation practices by large and multinational businesses.⁹

1.21 However, the then Opposition (the current government) expressed a number of concerns with the laws; in particular, that the laws would not address the issue of profit-shifting by multinational entities but have unintended consequences effecting the competitiveness of Australian owned businesses. In his second reading on the bill on 6 June 2013, the then Shadow Treasurer stated:

What the Commissioner of Taxation is going to do—and this is the first time this has happened—is publish individual companies' tax...

We support the publication of aggregate tax information, unless that information can be reasonably attributed to a single person. But the government has gone one step further and said, 'No, we think individual companies should have their tax disclosed.'¹⁰

1.22 The then Shadow Treasurer cited the opinion of Ernst and Young (EY), one of the largest global accounting firms:

...it is premature for Australia as a small open economy to engage in this public disclosure proposal unless and until public disclosure of corporate tax is identified by a majority of the G20, G8, OECD stakeholders or countries in the Asia Pacific region...it represents a distraction from the much bigger task of adjusting the system for taxation of international business.¹¹

8 Explanatory Memorandum, p. 11.

9 The Hon. David Bradbury MP, 'Tax Laws Amendment (2013 Measures No.2) Bill 2013: Second Reading Speech', House of Representatives, *Hansard*, 29 May 2013, p. 4246.

10 The Hon. Joe Hockey MP, 'Tax Laws Amendment (2013 Measures No.2) Bill 2013: Second Reading Speech', House of Representatives, *Hansard*, 6 June 2013, p. 5551.

11 The Hon. Joe Hockey MP, 'Tax Laws Amendment (2013 Measures No.2) Bill 2013: Second Reading Speech', House of Representatives, *Hansard*, 6 June 2013, p. 5551.

1.23 On 4 June 2015, Treasury released an Exposure Draft for consultation to amend the income tax transparency laws to remove the Tax Commissioner's obligation to publish certain tax information of Australian-owned private companies with total income of at least \$100 million. The concerns raised by submissions to the Exposure Draft have also been discussed in the Explanatory Memorandum to the bill and reflected in some of the submissions to this bill inquiry.¹²

12 See the Department of the Treasury, Better targeting the income tax transparency laws, Exposure Draft Consultation, 4 June 2015, <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2015/Better-targeting-the-income-tax-transparency-laws> (accessed 10 September 2015).

