

Additional Comments from the Australian Greens

1.1 These additional comments wish to acknowledge the hard work and contribution of former Senator, Christine Milne, who referred the inquiry to this committee. With her Committee colleagues, the former Senator drove much of the work and direction of the committee. She has also contributed to these additional comments. Her informed and thorough questioning made many of the witnesses uncomfortably shift in their seats and extracted important information from them. Her contribution to this inquiry, like her contribution to public debate generally, has been invaluable.

1.2 The Australian Greens fully support the Chair's report. These additional comments offer a strong basis for further recommendations to be included and considered by the parliament and government.

1.3 These interim report recommendations are limited to measures focussing on public disclosure, transparency and financial reporting of multinational groups operating in Australia. The more substantive recommendations that focus on the mechanisms of base erosion and profit shifting will be dealt with in the final report.

1.4 Opening up financial details to public scrutiny is a strategic priority. Within international agreements to develop a uniform approach to tax avoidance, strong transparency changes are unilateral measures Australia can make straight away without disrupting the multilateral discussions, while also showing Australia is serious about confronting this global blight on national governments.

1.5 A strong suite of financial disclosure measures will be far more effective and less costly to the government than their proposed general anti avoidance measures which are notoriously difficult to prosecute in litigation.

1.6 Public dissemination of a company's financial accounts carries with it a severe reputational risk to globally significant firms. Public exposure of tax arrangements in the UK has seen companies like Starbucks and Amazon announce that they will commence paying tax on UK sales after sustained public outcry.¹ Similarly, during this inquiry, Glencore announced it will close its marketing hubs so that transactions occur and are taxed in Australia – however this was also influenced by prevailing commercial arrangements.²

1.7 Just as efficient markets require the removal of information asymmetry for good investment decisions, efficient protection of the public interest and public revenue requires the removal of information asymmetry between corporate actors and the public, represented through our public institutions and agencies.

1 'Starbucks pays UK corporation tax for the first time since 2009', *BBC News*, 23 June 2013; Simon Bowers, 'Amazon to begin paying taxes on UK retail sales', *The Guardian*, 23 May 2015.

2 Ben Butler, 'Glencore to close down Singapore Trading Hub', *The Australian*, 10 April 2015.

1.8 As noted in the main report, prior to this inquiry, the public service, the Senate and the public generally, have largely been kept ignorant about the depth and breadth of aggressive tax minimisation by globally linked companies operating in Australia. The significant public interest in this inquiry can be largely attributed to the paucity of publicly available information about the tax arrangements of high-profile companies operating in Australia.

1.9 This inquiry has to date, helped unravel some of the activities and structures of aggressive tax minimisation, however there is still much more uncovering to be done. Opening up the books of companies is an indispensable structural change that needs to occur in order to facilitate public awareness and create new commercial practices.

1.10 Investigative financial journalism has an important role to play as the medium to translate this information to the public. To date, this has been very successfully done by the hard work of journalists such as Michael West, Neil Chenoweth and Nassim Khadem. This important public function of media is however compromised through the revelation during the inquiry that the ATO's most 'at risk' company for tax evasion is News Corporation.³

1.11 When a company with a significant market share of media reach is implicated in tax minimisation practices, it raises the legitimate question of whether the resources to investigate and expose such practices will be made available by the media company. Tax avoidance not only affects our revenue base, but has the potential - if left unguarded - to threaten the way our polity operates.

1.12 The secrecy of financial transactions and accounts is permitted through the minimal to non-existent requirements of filing detailed financial statements with ASIC. The Greens are strongly of the view that companies operating in Australia which are connected to a larger group of international companies should not be eligible for 'grandfathered treatment', exemption from reporting or special purpose accounting. The risk these companies pose to the government's consolidated fund require full compliance with general purpose financial reporting. The Australian Taxation Office (ATO) and accountants acting in the public interest are then able to scrutinise those statements.

1.13 Financial statements should be completed in accordance with prevailing accounting standards. Special purpose accounting should not be available as a rule to globally structured companies.

1.14 While the Committee has agreed to investigate this further in the final report, the Australian Greens wish to note in this interim report, the crucial importance of such a measure to allow greater forensic examination of a company's activities.

1.15 While disclosure of financial material can assist Australians to be informed about the activities of globally-linked firms, it must be assisted with public disclosure of past and concurrent practices. 10 Australian companies shifted \$31.4 billion out of

3 Neil Chenoweth, 'Rupert Murdoch's News Corp is ATO's top-tax risk', *Australian Financial Review*, 11 May 2015.

Australia to Singapore in the 2011-12 financial year alone. At the top of the list was a single energy company that shifted \$11 billion.⁴ Under current law and practices, these companies have a right to be kept confidential. Confidentiality of these significant transactions erodes the public interest.

1.16 Such a significant transfer of Australian-created wealth requires the shifting of proof to those who have all the information about their commercial activities. These companies should be required to explain to the Australian public – and not just the Australian Taxation Office – why these transactions are legitimate.

1.17 To ensure the integrity of our political discourse and strengthen our revenue base, in addition to those recommendations in the Chairs report, the following reporting measures should be immediately implemented.

Recommendation 1

1.18 The Australian Taxation Office should be required to publish the details of the top 10 Australian companies that transfer wealth off shore in each financial year. A right of reply will be afforded to each named company to justify its transactions.

Recommendation 2

1.19 Australian companies that are part of a larger group of international companies should not be eligible for special purpose accounting treatment and must provide ASIC with detailed financial reports to prevailing accounting standards.

Recommendation 3

1.20 Australian companies that are part of a larger group of international companies should include in their financial statements the value and purposes of all transactions between related companies.

Recommendation 4

1.21 ASIC should publish all details of exemptions from general purpose accounting by firm and association to global related parties, with a justification from ASIC as to why the exemption is necessary. ASIC should also publish any exemption from reporting timelines and clearly outline any changes to class orders that are implemented.

1.22 In seeking these gains in transparency of tax payments, it is also important to build on the gains already enshrined in law. Recommendation 4 informs the Senate to maintain existing transparency laws which apply to both public and private companies.

1.23 The current law requires a private or public company with income over \$100 million a year to provide to the ATO for publication, the name and Australian

4 Heath Aston, 'Energy Company's \$11 billion transfer to Singapore rings tax avoidance alarm bells', *Sydney Morning Herald*, 4 April 2015.

Business Number, the total income, the taxable income or net income (if any), and income tax payable.

1.24 The government has stated its intention to remove the requirement for private companies to comply with this public disclosure on the basis that individuals would be subject to kidnap fears.

1.25 The Committee sought information from Treasury and the Australian Taxation office as to whether they had provided advice on this risk by their own volition or whether the AFP had requested their advice. No evidence was provided that the threats of kidnap were based on information provided by any government agency. In the absence of such evidence, the government's sole justification for this exemption is simply not supported by facts.

1.26 While there was no evidence in support of carving out new exemptions, there was information provided to the committee that such an exemption may in fact assist further tax minimisation. The Uniting Church of Australia, Synod of Victoria and Tasmania supplementary submission states:

...a document obtained from the Australian Taxation Office (ATO) under freedom of information has revealed that the private companies linked to Australian high wealth individuals have average profit margins lower than the other categories of companies (foreign owned and Australian publicly listed) in the group that the legislation applies to. Almost half of these companies are foreign-headquartered and two-thirds have some form of international related party dealings.

They account for most of all international related party dealings reported to the ATO, despite being only 21% of the businesses caught under the tax transparency measures of the Tax Laws Amendment (2013 Measures No. 2) Act. It is possible that the lower average profit is simply due to this category of companies performing worse on average than other categories of businesses. However, there is the possibility that the lower average reported profitability is due to aggressive tax practices.

1.27 Their analysis shows a pattern of globally connected private companies with lower-than average profits. These are hallmarks of tax-avoidance structures and if the government persists with this exemption, they may be responsible for exacerbating rather than restricting aggressive tax minimisation practices.

Recommendation 5

1.28 In the absence of a compelling public policy purpose, the government should abandon legislative changes exempting private companies from providing minimal details about their profitability and taxes.

1.29 The prolific creation of trusts and subsidiary companies to facilitate the transfer of goods, services and income flows makes the comprehensive tracking of commercial activity and ultimate beneficial ownership impossible.

1.30 Not only does such secrecy enable tax avoidance, but it also has the potential to facilitate illicit flows of money that could be utilised by international organisations to finance criminal activities.

Recommendation 6

1.31 That the Parliament establish a public register of beneficial ownership of companies and trusts so that identification of financial beneficiaries can be traced and publicly identified. The Australian government should also work closely with other countries to establish a global standard for such registers.

1.32 While the Australian Greens support recommendation 7 in the Chair's report, we believe there is too much scope for the government to not act on the need for country-by-country reporting.

1.33 Before the Senate is the Corporations Amendment (Publish What You Pay) Bill 2014 to establish mandatory reporting requirements of payments made by Australian based extractive companies to foreign governments. The bill requires that companies must disclose these payments on a country-by-country and project-by-project basis.

1.34 It would apply to all Australian companies involved in extractive industries, including oil, gas, mining and native forest logging. It will apply to both Australian public and large proprietary companies. The overall aim of the Bill is to improve transparency and accountability of Australian extractive companies. The Bill aims to deter corruption by requiring payments to be made public.

1.35 Under the legislation, these companies and their subsidiaries would be required to submit a financial report detailing all payments made to government entities overseas over \$100,000. This threshold would bring Australia in line with the standards set by the US, EU and UK in their legislation and directives.

1.36 The legislation sets out that these reports must be in an open and machine-readable format, and would be published by ASIC, to ensure public accessibility and accountability. Misleading reporting will be dealt with under the rules that currently exist relating to financial statements.

1.37 This legislation intends to align Australia's legislative response to extractive industry transparency with that that is being pursued around the world, including in the United States, the United Kingdom and Canada.

Recommendation 7

1.38 That the Senate pass the Corporations Amendment (Publish What You Pay) Bill 2014.

**Senator Richard Di Natale
Leader of the Australian Greens**

