

Senate estimates 10 February 2016 – Commissioner opening statement

Thank you Chair.

I do want to offer a few opening remarks today because I feel strongly about the debate that has been taking place regarding our tax system.

Commentary suggests that our Australian tax system is under fire from the actions of multinationals and large companies seeking to abuse it, sidestep it and delay us, and importantly to get around paying tax in Australia.

My message to companies operating in Australia is clear – you must pay your fair share of tax on the profits you earn here. There is no getting around it, there are no exceptions to be made, and there is no weakness in our resolve to administer the tax system.

Last year we made significant progress in addressing tax avoidance domestically and globally. We have shown our resolve and commitment to take on these difficult and complex matters.

In 2016, progress continues unabated. We are seeing some positive changes in the behaviour of multinationals and large corporates already. But I acknowledge that despite the progress made, the community still has questions. In my time as Tax Commissioner, I have never been asked more than now to explain “what are you doing about big companies paying their fair share of tax”?

I have said many times that the majority of large corporates, especially Australian owned companies, pay the right amount of tax in Australia and are open and transparent in their dealings with us. There are however, a minority of large corporates who try to avoid their obligations, and **we act - we do act** - on this behaviour.

- Last financial year we completed around 50 audits and 350 reviews of large public groups raising \$2.5 billion in liabilities, and we collected \$1.6 billion in cash over that year.
- Currently, we have over 70 audits and 220 reviews of large businesses in play.
- We have 162 active Advance Pricing Arrangements (APAs) in place, with an additional 115 in progress and another 42 in the early engagement stage. These APAs give certainty that revenue is being accounted for and that we have predictability about pricing structures.
- We constantly raise the bar in our engagement with large taxpayers. Positive engagement is no longer enough – yes we value open and frank dialogue, but we also judge companies on their structures and what they do. In December we issued risk assessment ratings to 6 large public groups informing them that they were in our highest risk quadrant (Q1), reflecting our view of their tax behaviour.

We remain actively focussed on multinational enterprises. We've already written to 26 taxpayers who we've had under audit to tell them that they need to get their house in order. Last week we approved letters to be issued to another 60 companies to say the same thing. There will be more put on notice in the coming months, as we work our way through the pool of taxpayers who have an 'operate here and bill overseas' business model.

Where these companies do not voluntarily comply with the new law, we will be commencing immediate reviews and audits – these are non-negotiable.

We will always look to work cooperatively with multinationals and the large market to promote positive engagement. But this does not mean that we will be afraid to take these discussions further, to investigate the evidence presented to us, or to take firm action.

Some of these cases have been going on for 12 months or more now – people have come to the table, said all the right things, made promises, but when push comes to shove, they don't deliver. We continue to negotiate back and forth with requests for information and more detail bit by bit.

The excuses we hear from these companies are frankly over the top – how is it possible that companies known for their new-age technology and innovative products and services, fail to be able to furnish us with basic reports showing their business structures, their profits, how much tax they've paid and where. Their clear tactic is to delay and obstruct. They game the system. They even have the gall to complain that we are uncooperative and unreasonable simply because we don't agree with them or their advisors on what are, at times, quite outlandish claims.

These companies have pushed the envelope on reasonableness – they play games, they string us along, they believe we can be stooled. Enough is enough. No more. We will be reasonable with those that genuinely cooperate, but we will now take a much harder stance on those who do not.

We will not be rolling over and giving further extensions of time. We are ruling the line under these protracted negotiations and proceeding immediately to raise assessments and create liabilities on these cases – potentially taking them all the way to court if necessary.

We will continue to challenge sharp tax practices in the courts. We've received positive court decisions in respect to Chevron and Orica so 'the worm is turning'. These decisions demonstrate without doubt, that if companies engage in tax avoidance behaviour, they can expect more than just a 'please explain' letter. Cases featuring the same types of rolled up loans and intra-company financing arrangements will be aggressively pursued. I expect significant assessments as a result. The

Orica case was worth about \$40 million in tax to be paid and penalties, plus interest. There will be more cases to come forward this year.

There are differing views on the ATO's approach to managing these challenges and disputes with the 'big end of town'. There are those who call for caution and that we tread more gently where outcomes have the potential for wide-reaching effects across industry and may be stated to potentially curb foreign investment or growth in Australia.

Yet we continue to face criticism that the ATO is settling cases with the large market too easily, that we are not going hard enough. Some critics will tell you that settlements are a bad thing, but these cases are extraordinarily complex, risky, expensive to run and take years to resolve. Settlements are about locking in a great result for the Australian taxpayer now, and creating certainty for the future.

I can assure you, we will be aggressive against egregious behaviours from these companies. The ATO will not settle a dispute at any price. It's not just my word; we have an independent assurer, a former Federal Court judge, who is assisting us in designing and testing our settlements through an independent assurance process. This independent examination of our settlements (including those with large business) ensures that the best outcome is likely to be achieved, and that we are settling the right cases in the right way.

My people are just as concerned about media reports suggesting large corporates are 'getting away with it' or that the ATO is 'too soft'. They want to be the front line in ensuring we maintain the community's confidence in our tax system.

We now have over 150 people working in our internationals team. This includes more than 20 new recruits, who have specialist experience working in economics, transfer pricing and international risk. These complement the more than 1000 people in our public groups area. I am

absolutely confident of our skills, our resources and our resolve to pursue these important matters.

In summary, my message to the community is this - be in no doubt that the ATO is resolutely tackling tax avoidance.

Our work program this year will continue to focus on: implementation of the MAAL and BEPS action plan, e-commerce, thin capitalisation manipulation, related party financing and offshore hubs. Where we see behaviours that don't meet the intentions of the law, we will be front and centre.

Our domestic work is backed by unprecedented worldwide cooperation to ensure multinationals pay tax where they generate profits. We will continue to support the OECD and work with other countries to improve global cooperation to tackle multinational tax avoidance. As countries adopt the new OECD approaches in tax treaties, the full benefit from global transparency and cooperation will become evident.

Multinationals will be under much more scrutiny and accountability across jurisdictions.

For the great majority of individuals, small businesses and companies that are trying to do the right thing on tax, we will continue to work as hard as we can to make your experience simple, fast and convenient. But for those that actively seek to avoid or minimise their tax through aggressive practices, they can expect to be challenged. The ATO is well resourced and better positioned globally to deal with tax avoidance, Australia's laws are stronger than ever, and we are determined to secure this revenue for the Australian community.