The Senate

Economics
References Committee

Corporate tax avoidance

Part III
Much heat, little light so far

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Senate Economics References Committee

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Abbreviations and acronyms

AASB	Australian Accounting Standards Board
ANAO	Australian National Audit Office
APPEA	Australian Petroleum Production & Exploration Association
ASIC	Australian Securities and Investments Commission
ASX	Australian Stock Exchange
ATO	Australian Taxation Office
BEPS	Base Erosion and Profit Shifting
CbC	Country-by-Country
CPSU	Community and Public Sector Union
CSG	Coal Seam Gas
DPT	Diverted Profits Tax
EBITDA	Earnings Before Interest, Taxes, Depreciation, and Amortisation
GDP	Gross Domestic Product
GST	Goods and Services Tax
ITF	International Transport Workers' Federation
KTT	Kipper Tuna Turrum
LNG	Liquefied Natural Gas
LPG	Liquefied Petroleum Gas
LTBR	Long Term Bond Rate
MAAL	Multinational Anti-Avoidance Law
MNEs	Global Multinational Enterprises
NWS	North West Shelf
OECD	Organization for Economic Cooperation and Development
PC	Productivity Commission
PRRT	Petroleum Resource Rent Tax
PWYP	Publish What You Pay
TAA	*Tax Administration Act 1953*
TJN-Aus	Tax Justice Network Australia
TTC	Tax Transparency Code

Recommendations

Recommendation 1

3.52 The committee recommends that the thin capitalisation rules be amended so that the worldwide gearing ratio is the only method by which interest related deductions should be calculated for the purpose of tax treatment in Australia.

Recommendation 2

3.68 The committee recommends that the government undertake an independent review into the detriment to Australian tax revenue that arises from the current transfer pricing regime, and explore options to modify transfer pricing rules, or other tax laws, to ensure multinational enterprises make the appropriate contribution to Australian tax revenue.

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*.

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.**

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.

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.

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.

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.

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.

Recommendation 10

5.141 The committee recommends that the government finalise and release its response to the Callaghan report into the Review of the Petroleum Resource Rent Tax.

Recommendation 11

5.142 The committee recommends that the government overhaul uplift rates for future Petroleum Resource Rent Tax eligible projects, so as to make them less generous.

Recommendation 12

5.143 The committee recommends that the ordering of deductions be rationalised for future Petroleum Resource Rent Tax eligible projects so that those with the highest compounding rates are used first for tax deduction purposes.

Recommendation 13

5.144 The committee recommends that the gas transfer pricing method for Petroleum Resource Rent Tax eligible projects be reformed to make it simpler and more transparent so as to ensure that it delivers a fair return to the community.

Chapter 1
Introduction

1.1 This is the final report of the inquiry by the Senate Economics References Committee into corporate tax avoidance in Australia. The matter of corporate tax avoidance was referred to the committee on 2 October 2014 for report by the first sitting day in June 2015.

1.2 The terms of reference for the inquiry are:

> Tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia, with specific reference to:
>
> (a) the adequacy of Australia's current laws;
>
> (b) any need for greater transparency to deter tax avoidance and provide assurance that all companies are complying fully with Australia's tax laws;
>
> (c) the broader economic impacts of this behaviour, beyond the direct effect on government revenue;
>
> (d) the opportunities to collaborate internationally and/or act unilaterally to address the problem;
>
> (e) the performance and capability of the Australian Taxation Office (ATO) to investigate and launch litigation, in the wake of drastic budget cuts to staffing numbers;
>
> (f) the role and performance of the Australian Securities and Investments Commission in working with corporations and supporting the ATO to protect public revenue;
>
> (g) any relevant recommendations or issues arising from the Government's White Paper process on the 'Reform of Australia's Tax System'; and
>
> (h) any other related matters.[1]

1.3 In the 44th Parliament, the Senate extended the reporting date for the inquiry on a number of occasions, and it was ultimately moved to 30 September 2016. The inquiry lapsed at the end of the 44th Parliament.

1.4 On 11 October 2016, the Senate agreed to the committee's recommendation that the inquiry be re-adopted in the 45th Parliament, with a reporting date of 30 September 2017.[2]

1.5 On 1 December 2016, the committee resolved to broaden the scope of the inquiry to include Australia's offshore oil and gas industry, in particular:

> The treatment and/or payment of:

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1 *Journals of the Senate*, No. 59, 2 October 2014, p. 1588.

2 *Journals of the Senate*, No. 9, 11 October 2016, pp. 195–197.

i. royalties;
ii. the Petroleum Resource Rent Tax (PRRT);
iii. deductions; and
iv. other taxes

by corporations involved in Australia's offshore oil and gas industry, including matters relating to the collection of these moneys by government.

1.6 The inquiry was extended a further three times: on 12 September 2017 to 28 November 2017; on 27 November 2017 to 6 December 2017; on 5 December 2017 to 30 May 2018.

Conduct of inquiry

1.7 The committee advertised the inquiry on its website at the commencement and again when the scope was broadened. It wrote directly to government agencies, large corporations based in Australia and multinationals operating in Australia, industry groups and associations, academics and other interested parties drawing attention to the inquiry and inviting them to make submissions.

Submissions and public hearings

1.8 The committee received a total of 167 submissions, of which three are confidential. Of these, 127 submissions were received in the 44th Parliament with the remainder received in the 45th Parliament. Submissions and additional information received are listed at Appendix 2.

1.9 The committee received over 8000 emails from individuals using an online tool coordinated by Sum of Us where people could express their concerns about the operation of the PRRT to the committee. The committee also received over 3000 emails from individuals concerned about corporate tax avoidance, particularly by energy companies, through a campaign organised by Get Up!. Due to the large number of emails received through these campaigns, it was not possible for the committee to accept them as submissions and publish them on the committee’s website. However, the committee agreed to accept the emails as correspondence, and acknowledge them on the committee's website.

1.10 The committee held the following public hearings:

- 8 April 2015 in Sydney;
- 9 April 2015 in Canberra;
- 10 April 2015 in Melbourne;
- 22 April 2015 in Sydney;
- 1 July 2015 in Sydney;
- 18 November 2015 in Sydney;
- 21 April 2016 in Canberra;
- 28 April 2017 in Perth (PRRT);
- 3 July 2017 in Canberra (PRRT);

- 4 July 2017 in Sydney;
- 22 August 2017 in Sydney; and
- 14 March 2018 in Melbourne.

1.11 A list of witnesses is provided at Appendix 3.

Background to inquiry

1.10 The matter of corporate tax avoidance was referred to the committee because of widespread concerns about the nature and prevalence of tax avoidance and aggressive tax minimisation among large Australian corporations and multinational enterprises operating in Australia.

1.12 At the time of the inquiry's initial referral in 2014, a number of reports and investigations raised concerns that large corporations operating in Australia were not 'paying their fair share' of taxation revenue. The Tax Justice Network Australia (TJN-Aus) released a report, *Who Pays for Our Common Wealth?,* which calculated that a significant proportion of the largest listed companies (ASX200) did not pay anywhere near the statutory corporate income tax level of 30 per cent. Similarly, media reports indicated that a number of multinational enterprises were using complex tax structures and arrangements to minimise the amount of tax paid on profits derived from activities in Australia.

1.13 Much of the ongoing debate about multinational tax avoidance has revolved around whether companies pay their 'fair share'. In effect, the fair share debate is based on the relative contribution of various economic actors to tax revenue. There is a perception that most Australian businesses (both large and small) and individuals contribute appropriately to the tax base, while multinationals are able to use various tax arrangements to shirk paying a level of tax that is commensurate with community standards.

1.14 Mr Paul Oosting from GetUp! outlined some of the community sentiment towards multinationals that do not contribute to tax revenue:

> We are seeing the screws put on everyday Australians through pressure put on them by things like the Centrelink debt fraud that this government has rolled out, attacking vulnerable Australians to try to get funds out of them, and at the same time we are seeing cuts to essential services like schools, hospitals and the other infrastructure…Here we have major international corporations who are paying absolutely zero dollars in tax, companies, like Chevron, who are making huge profits and yet are contributing absolutely nothing…to our nation. The public are rightly outraged by this.[3]

1.15 In a research paper on *Company tax and foreign investment in Australia,* Mr David Richardson from the Australia Institute came to the conclusion that cutting the corporate income tax rate only benefits foreign-owned companies:

3 Mr Paul Oosting, *Committee Hansard*, 28 April 2017, p. 20.

> We have seen how cutting the company tax rate does nothing for the ultimate resident owners of Australian companies. Only foreign-owned companies would potentially benefit.
>
> …
>
> The present Treasurer has tried to present foreign investment as a 'must have' to keep the company tax cuts proposal alive. But we doubt many Australians really understand that the company tax plan amounts to a very large gift to foreign owners.[4]

1.16 In the context of a labour dispute at ExxonMobil Australia's Longford facility, the Electrical Trades Union claimed that:

> The Federal Government would have us believe that tax cuts for corporations like Exxon will lead to higher wages: but the experience for our members shows that when corporations pay minimal or no tax, they still take opportunities to suppress and cut the wages of their workers.[5]

1.17 Foreign ownership and cross border operations allow multinational corporations the opportunity to use various tax strategies to reduce the amount of income tax payable. The issue is not whether these activities are legal but whether their conduct is ethically and morally defensible.

1.18 Corporate income tax, if structured and enforced properly, is one of the few mechanisms by which governments can ensure multinational corporations contribute to the society from which they profit. In effect, a robust corporate income tax regime is the means by which these organisations should repay the 'social licence' afforded to them to conduct their business in Australia.

Reports tabled by this inquiry

1.19 The committee tabled two interim reports during the 44th Parliament:

- *Part I—You cannot tax what you cannot see* on 18 August 2015; and
- *Part II—Gaming the System* on 22 April 2016.

Part I

1.20 The committee released a first interim report, *Part I—You cannot tax what you cannot see*, on 18 August 2015.

1.21 Given the broad scope of the terms of reference and the timing of the multilateral OECD/G20 initiative on base erosion and profit shifting, the committee resolved to report on the initial work of the inquiry and the four public hearings that were held in April 2015. The interim report examined the evidence presented to the committee by some of the largest multinational corporations operating in Australia. It concluded that, despite the recent efforts of successive governments to address corporate tax avoidance, significant concerns persist about multinational corporations

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4 Mr David Richardson, *Company tax and foreign investment in Australia*, Discussion Paper, The Australia Institute, January 2017, p. 27.

5 Electrical Trades Union, *Submission 157*, pp. 5–6.

not paying an appropriate amount of tax in Australia relative to the profits derived from activities in Australia.

1.22 This report supported the ambitious OECD/G20 initiative to develop a coordinated response to base erosion and profit shifting but also noted that this initiative should not prevent the Australian Government from taking unilateral action.

1.23 The interim report made 17 recommendations over four areas:

- evidence of tax avoidance and aggressive minimisation;
- multilateral efforts to combat tax avoidance and aggressive minimisation;
- potential areas of unilateral action to protect Australia's revenue base; and
- the capacity of Australian government agencies to collect corporate taxes.

1.24 The recommendations of the interim report focused primarily on increasing the transparency of corporate tax affairs and ensuring that tax administrators could access the information required to identify and act on aggressive tax minimisation and avoidance. The report is available on the committee's website.

Part II

1.25 The committee released a second interim report, *Part II—Gaming the System,* on 22 April 2016. In this report on corporate tax avoidance, the committee continued its consideration of the importance of transparency with particular emphasis on transfer pricing and the secrecy surrounding this activity. The committee briefly touched on exemptions from general purpose accounting. It also looked at tax minimisation strategies including excessive debt loading and avoiding permanent establishment in Australia.

1.26 This report did not make any recommendations. The report is also available on the committee's website.

Part III

1.27 This report completes the committee's investigation into corporate tax avoidance by reflecting on the progress made since the referral of the inquiry in 2014. It considers options for continuing to improve the integrity of the corporate tax system, including where multinational sales have been accounted for offshore and/or taxable income in Australia has been reduced by aggressive transfer pricing and debt loading.

1.28 As the inquiry progressed, concerns were specifically raised about the activities of oil and gas multinationals with significant operations in Australia. With an expanded scope, the committee specifically considered the tax contribution of these companies for the extraction of oil and gas resources, particularly in relation to the Petroleum Resource Rent Tax regime.

Structure of report

1.29 Including this introductory chapter, the report's structure is as follows:

- Chapter 2 reflects on Australia's progress in addressing multinational tax avoidance;
- Chapter 3 explores options to further improve the integrity of the corporate tax regime;
- Chapter 4 considers how transparency measures could be enhanced to increase the availability and usefulness of publicly available information; and
- Chapter 5 investigates whether the tax settings for oil and gas extraction are appropriate.

Acknowledgements

1.30 The committee thanks all the individuals and organisations who assisted with the inquiry through written submissions and appearing at hearings. In particular, the committee would like to acknowledge the efforts that many companies and government departments made to make senior executives available, often at short notice.

Chapter 2

Evolution of the multinational tax framework

2.1 Over the course of this inquiry, Australia's tax framework has been progressively amended to address concerns about the level of tax being paid by multinational corporations. This chapter explores both Australia's involvement in, and implementation of, the G20 and OECD initiatives to address multinational tax avoidance globally and the unilateral measures designed to strengthen the integrity of Australia's tax system.

International initiatives to address base erosion and profit shifting

2.2 Over the last 5 years, there have been a number of significant international initiatives that have developed proposals and recommendations designed to support a collaborative approach to reduce multinational tax avoidance. The most notable of these is the OECD Base Erosion and Profit Shifting (BEPS) project.

2.3 The BEPS project represents an unparalleled effort by OECD and G20 countries to restore confidence in the international tax system. More than 60 countries worked together to deliver a comprehensive package of action items in just two years which represents the first substantial renovation of the international tax standards in almost a century.[1]

2.4 The project sought to reduce opportunities for base erosion and profit shifting by multinational enterprises and ensure that profits are taxed where economic activities take place and value is created. This work was driven by a number of goals:

- to restore the trust of ordinary people in the fairness of their tax system;
- to level the playing field among businesses; and
- to provide governments with more efficient tools to ensure the effectiveness of their sovereign tax policies.[2]

2.5 On 5 October 2015, the final BEPS reports were released with a commitment by countries involved to the consistent implementation of agreed measures. In some areas, minimum standards were agreed to tackle specific issues where a failure to act by some countries would have created negative spill overs (including adverse impacts on competitiveness) on other countries.[3] A summary of the BEPS Action Plan items and the Australian Government's response is listed at Appendix 1.

2.6 Following the release of the final report, the Treasurer commented that:

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1 OECD, *Explanatory Statements*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, pp. 4–5.

2 OECD, *Explanatory Statements*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 4.

3 OECD, *Explanatory Statements*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 6.

> The intricate and sensitive nature of international taxation demands precise and targeted responses to policy challenges, responses that are developed with our international partners to maximise their effectiveness.[4]

2.7 The OECD emphasised the importance of countries working together to consistently implement and apply the BEPS recommendations:

> …BEPS by its nature requires coordinated responses, particularly in the area of domestic law measures; it is therefore expected that they [countries] will implement their commitments, and that they will seek consistency and convergence when deciding upon the implementation of these measures.[5]

2.8 An important ongoing aspect of the BEPS project is a focus on monitoring the implementation and effectiveness of the measures adopted by individual countries as well as the impact on both compliance by taxpayers and proper implementation by tax administrators. Monitoring will consist of reports on what countries have done to implement the BEPS recommendations and also involve some form of peer review. The proposed monitoring process will also have broader benefits through reducing misunderstandings and disputes between governments, and provide better data and analysis to support an ongoing evaluation of the quantitative impact of BEPS, as well as the impact of the countermeasures developed by the project.[6]

2.9 Progress on the implementation of the BEPS recommendations has been ongoing with the *OECD Secretary-General Report to G20 Leaders* noting that:

> 2017 is the year of implementation: implementation of the Common Reporting Standard with the first automatic exchanges of financial information to take place in September 2017; and, implementation of the measures to address base erosion and profit shifting (BEPS), with the OECD/G20 Inclusive Framework on BEPS implementation now fully operational.
>
> …
>
> Looking ahead, support on implementation across all areas of the G20's tax agenda will continue. In the Inclusive Framework, technical discussions amongst its members continue, in particular on a number of important issues relating to transfer pricing, and with a growing sense of urgency among many governments for the development of policy options to be advanced in relation to taxation of the digital economy, we will publish an interim report in the first half of 2018.[7]

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4 The Hon. Scott Morrison MP (Treasurer), *OECD report supports Australian Government action on multinational tax avoidance*, Media Release, 6 October 2015.

5 OECD, *Explanatory Statements*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 9.

6 OECD, *Explanatory Statements*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, pp. 10–11.

7 Mr Angel Gurria (OECD Secretary-General), *OECD Secretary-General Report to G20 Leaders*, July 2017, pp. 5–6.

Reforms to the Australian corporate tax system to address avoidance

2.10 Since the referral of this inquiry in October 2014, the Australian Government has announced a number of significant measures to address multinational tax avoidance in four successive budgets from 2015–16 through to 2018–19. Such a continued emphasis reflects the importance to the government to address, and be seen to address, this issue which has become increasingly important to the wider community.

2.11 While there is debate as to whether some measures represent unilateral action outside the BEPS project, the Australian Government considers that all of its actions to address multinational tax avoidance are consistent with the BEPS project.

2.12 It is worth noting that many of these tax measures apply only to significant global entities, defined as either a 'global parent entity' or a member of a group of entities (consolidated for tax purposes as a single group) with an annual global income of AUD$1 billion or more.[8]

Multinational Anti-Avoidance Law

2.13 The Multinational Anti-Avoidance Law (MAAL) is a unilateral measure that applied from 1 January 2016 to significant global entities. It is designed to counter complex, contrived and artificial schemes intended to avoid paying Australian tax. Instead of prescribing specific actions, the MAAL makes it possible for the ATO to collect tax where a foreign entity has set up a scheme to obtain a tax benefit—that is, to avoid paying tax on profit is has made in Australia.

2.14 The MAAL targets multinational entities that avoid a taxable presence by booking their revenue offshore despite undertaking significant work in Australia with direct connection to Australian sales.[9] Penalties associated with tax avoidance schemes were also increased as part of the MAAL enabling legislation (see below).[10]

2.15 The MAAL is intended to encourage multinationals to restructure their operations by creating permanent tax establishments in Australia and subsequently be part of the mainstream tax system. As the Commissioner of Taxation explained:

> Part IVA [the anti-avoidance provision] is often referred to as the provision of last resort. You would seek to apply other provisions first before you would ever go to Part IVA. The MAAL…is an amendment to Part IVA. So generally we would not necessarily have that as the first provision that we would bring out.
>
> …

8 Schedule 1, *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015*.

9 Explanatory Memorandum, *Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015*, p. 20.

10 Schedule 3, *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015*.

It is a safety net provision.[11]

2.16 The 2017–18 Budget proposed further strengthening of the MAAL legislation to negate attempts to use foreign trusts and partnerships in corporate structures to circumvent the MAAL. The amendments, which came into effect from 1 January 2016, when the MAAL came into effect, apply to:

- corporate structures that involve the interposition of partnerships that have any foreign resident partners;
- trusts that have any foreign resident trustees; and
- foreign trusts that temporarily have their central management and control in Australia.[12]

Diverted Profits Tax

2.17 The Diverted Profits Tax (DPT) applies from 1 July 2017 to significant global entities and is aimed at those which have arrangements with offshore related parties that lack economic substance in order to divert Australian profits to lower tax countries and avoid paying Australian tax. The DPT would apply to any scheme that is assessed to provide a tax benefit to the multinational. Under a DPT assessment, tax would be payable on the amount of diverted profits at a penalty rate of 40 per cent.[13] Similarly to the MAAL, the DPT is a provision of last resort under Part IVA of the *Income Tax Assessment Act 1936*.

2.18 The Government considers that the DPT is consistent with the global approach to tax avoidance as it supports the OECD BEPS transfer pricing reforms by encouraging greater cooperation, and provides an additional power for the Commissioner of Taxation to address arrangements that divert profits offshore and lack economic substance. The DPT is also not in conflict with tax treaties as it is not subject to Australia's bilateral treaties because it is an anti-avoidance measure.[14]

GST on digital goods and services

2.19 Goods and Services Tax (GST) was announced to apply to cross border supplies of goods and services imported by consumers from 1 July 2017. This measure is intended to restore the integrity of the consumption tax regime so that GST applies to non-exempt products and services, including digital supplies purchased from overseas and from Australia. A registration threshold of A$75 000 per annum,

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11 Mr Chris Jordan, Australian Taxation Office, *Proof Committee Hansard*, Senate Economics Legislation Committee, Supplementary Estimates 2015–16, 21 October 2015, p. 57.

12 Australian Government, *Budget Paper No. 2 2017–18*, p. 39.

13 Explanatory Memorandum, *Treasury Laws Amendment (Combating Multinational Tax Avoidance) Bill 2017 and Diverted Profits Tax Bill 2017*, pp. 8–10, 101.

14 Explanatory Memorandum, *Treasury Laws Amendment (Combating Multinational Tax Avoidance) Bill 2017 and Diverted Profits Tax Bill 2017*, pp. 105–106.

equivalent to the threshold for domestic businesses, has been set for those overseas businesses that supply imported services or digital goods.[15]

2.20 The measure reflects Australia's early adoption of guidelines for business-to-consumer supplies of digital products being developed by the OECD as part of the BEPS project (see BEPS Action 1 in Appendix 1).

2.21 The introduction of GST on low value imported goods (valued at less than $1000) by consumers will come into effect from 1 July 2018.[16]

2.22 In addition, the 2018–19 Budget announced the government's intention to ensure that offshore sellers of hotel accommodation in Australia calculate GST turnover in the same way as local sellers from 1 July 2019.[17]

Amendments to the transfer pricing regime

2.23 Australian transfer pricing guidelines were updated in 2017 to reflect changes to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrators that were approved by the OECD Council on 23 May 2016.[18]

2.24 The amendments also introduced Country-by-Country (CbC) reporting, which requires significant global entities to provide certain information to tax authorities to assess transfer pricing risks, and, when necessary, assist in commencing and targeting audit enquiries.[19] CbC reporting obligations require entities to provide each of the following statements:

- a master file providing an overview of the multinational enterprise group business, including the nature of its global business operations, its overall transfer pricing policies, and its allocation of income and economic activity;
- a local file focusing on specific transactions between the reporting entity and its associated enterprises in other countries, as well as the amounts involved in those transactions, and the entity's analysis of transfer pricing determinations it has made; and
- a CbC report containing certain information relating to the global allocation of the multinational enterprise's income and taxes paid together with certain indicators of the location of economic activity within the multinational enterprise group.[20]

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15 Schedule 1, *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016.*

16 *Treasury Laws Amendment (GST Low Value Goods) Act 2017.*

17 *Budget 2018–19: Budget Paper No. 2*, p. 29.

18 Schedule 3, *Treasury Laws Amendment (Combating Multinational Tax Avoidance) Act 2017*.

19 Explanatory Memorandum, *Treasury Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015*, pp. 60.

20 Explanatory Memorandum, *Treasury Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015*, pp. 63.

2.25 CbC reporting statements are required to be filed within 12 months after the end of the period to which they relate.[21] As CbC reporting requirements were introduced for income years starting on or after 1 January 2016, the first CbC reporting statements were lodged late in 2017. As of 14 March 2018, the ATO had received 42 CbC reports.[22]

Stronger penalties

2.26 In addition to the measures outlined above, the Australian Government has introduced stronger penalties to ensure more economic activity is accounted for in Australia, and to encourage multinationals (and all corporate taxpayers in general) to provide relevant information to tax administrators in a timely fashion. Maximum penalties were doubled for significant global entities that enter into tax avoidance or profit shifting schemes and do not have a reasonably arguable position.[23]

2.27 Increased administrative penalties are intended to encourage significant global entities to comply with their taxation obligations, including lodging tax documents on time and taking reasonable care when making statements. The increased penalties apply to all lodgements required in the approved form, which includes income tax returns, activity statements, CbC reports and general purpose financial statements. Where a significant global entity fails to lodge on time, the base penalty amount is multiplied by 500, which is 100 times larger than for a 'large entity'. [24] This means that the maximum administrative penalty could be up to $525 000 for failing to lodge tax documents on time.

Relaxed transparency measures for private companies

2.28 In October 2015, the Australian Parliament changed income tax transparency laws to remove the reporting requirements for Australian-owned private companies with total annual income of more than $100 million. Reporting requirements were retained for public companies and foreign owned companies with total annual income of more than $100 million.[25] Subsequently, in November 2015, the income tax transparency laws were amended again to impose reporting requirements for Australian-owned private companies with total annual income of more than $200 million.[26]

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21 Schedule 4, *Treasury Laws Amendment (Combating Multinational Tax Avoidance) Act 2015.*

22 Mr Mark Konza, Australian Taxation Office, *Committee Hansard*, 14 March 2018, p. 66.

23 Schedule 3, *Treasury Laws Amendment (Combating Multinational Tax Avoidance) Act 2015.*

24 Explanatory Memorandum, *Treasury Laws Amendment (Combating Multinational Tax Avoidance) Bill 2017 and Diverted Profits Tax Bill 2017*, p. 71.

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

26 Schedule 1 amendment to *Taxation Administration Act 1953, Treasury Laws Amendment (Combating Multinational Tax Avoidance) Act 2015.*

Voluntary Tax Transparency Code

2.29 The Voluntary Tax Transparency Code (TTC) is a set of principles and minimum standards to guide medium and large businesses on public disclosure of tax information. The TTC was developed by the Board of Taxation and endorsed by the Australian Government in the 2016–17 Budget. It 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.[27]

2.30 TTC reporting requirements differ depending on the size of the business. For medium sized businesses with Australian turnover of between $100 and $500 million, the TTC report should contain a reconciliation of accounting profit to tax expense and to income tax paid or payable; identification of material temporary and non-temporary differences; and accounting effective company tax rates for Australian and global operations (pursuant to Australian Accounting Standards Board guidelines). In addition to content required for medium businesses, TTC reports for large businesses with Australian turnover of greater than $500 million should contain an approach to tax strategy and governance; a tax contribution summary of corporate taxes paid; and, information about international third party related dealings.[28]

2.31 Businesses may elect to satisfy the minimum standards of the TTC by publishing improved disclosures of tax information in their general purpose financial statements, a Taxes Paid Report or another document. There is no prescribed template or format for TTC content.[29]

2.32 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.[30] The ATO reports that, in total, 101 corporates have published at least one report and a further 25 have signalled an intention to adopt the code by registering.[31]

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27 Australian Taxation Office, *Voluntary Tax Transparency Code*, https://www.ato.gov.au/Business/Large-business/In-detail/Tax-transparency/Voluntary-Tax-Transparency-Code/ (accessed 31 October 2017).

28 Australian Taxation Office, *Voluntary Tax Transparency Code*, https://www.ato.gov.au/Business/Large-business/In-detail/Tax-transparency/Voluntary-Tax-Transparency-Code/ (accessed 31 October 2017).

29 Australian Taxation Office, *Voluntary Tax Transparency Code*, https://www.ato.gov.au/Business/Large-business/In-detail/Tax-transparency/Voluntary-Tax-Transparency-Code/ (accessed 31 October 2017).

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

31 Mr Jeremy Hirschhorn, Australian Taxation Office, *Committee Hansard*, 14 March 2018, p. 70.

Chapter 3

Where to from here?

3.1 While the committee recognises that considerable progress has been made over the last three years to address issues associated with multinational tax avoidance, further measures need to be taken to improve the integrity of the tax system so multinationals appropriately contribute to Australia's revenue base.

3.2 This chapter explores the effect that recent reforms have had to increase the tax paid by multinationals before considering options to further reduce opportunities for multinational corporations to avoid tax.

Views on progress already made

3.3 While successive governments have sought to address multinational tax avoidance, views were mixed on the relative success of these reforms.

3.4 Professor Richard Vann, in his second appearance before the committee over the course of the inquiry in July 2017, noted that:

> Since I last appeared, there has been a huge amount of change, partly as a result of this committee's activities. Governments of both persuasions have decided that foreign companies are good for extra revenue and they do not vote, except with their feet and with their money, so have become a real target of legislation, administration and a number of transparency issues.
>
> …
>
> As far as the impact is concerned, my summary is: much heat, little light so far.[1]

3.5 This was contested by the ATO which was keen to highlight to the committee the progress and outcomes that it had made on the multinational tax front since the inquiry's inception:

> We have marshalled our resources, utilised the enhancements of the law and policy framework, demonstrated resolve and called timeout on delay tactics. We have achieved results. In doing so, we have not only cleaned up the past and any back taxes owed, we have, critically, also locked in future arrangements to safeguard against the insipid roundabout of repeated chase-and-tidy-up scenarios with taxpayers.[2]

3.6 The ATO was also keen to highlight how multinationals had been active in restructuring their operations to avoid punitive multinational tax measures:

> …we have also reviewed 221 companies, with at least 32 of those seeking to restructure their operations as a result of our enforcement of the

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1 Professor Richard Vann, *Committee Hansard*, 4 July 2017, pp. 9–10.

2 Mr Chris Jordan, Commissioner of Taxation, Australian Taxation Office, *Committee Hansard*, 22 August 2017, p. 50.

> multinational anti-avoidance legislation, the MAAL. We have another 75 companies still under audit, and a number of companies, notably Google and Facebook, have stated publicly that they have restructured their Australian operations.

3.7 This restructuring was expected to result in a significant increase in sales revenue attributed to Australian operations for tax purposes:

> …we [the ATO] anticipate sales returned to Australia as a result of the MAAL will amount to over $7 billion each year. That's 7 billion in sales that will now be booked in Australia, and the appropriate profit from those activities in Australia will be taxed in Australia for the first time. Importantly, this includes locking in arrangements for future growth…[3]

3.8 In a subsequent submission, the ATO indicated that the MAAL has resulted in:

> …an estimated $100 million of income tax per annum being permanently restored. It has led to a permanent increase in the GST tax base, with an additional $290 million paid in 2016–17.[4]

3.9 The introduction of the MAAL also assisted the ATO to resolve disputes from prior income years:

> When the MAAL came in, the MAAL settled the issue from 1 January 2016. They [multinational corporations] knew they had to return sales from 1 January 2016, and they knew they had to deal with us on transfer pricing from that date as well. So then the back years became a much more manageable topic…We have been saying to them, 'You don't get sign-off on your restructure under the MAAL until the back years have been cleaned up'. So this is the way in which those transfer pricing laws, the anti-avoidance laws and the MAAL have worked in combination to bring this situation about.[5]

3.10 The ATO also reported that recent developments had resulted in progressing and finalising some long running disputes, particularly in the e-commerce industry:

> …last year we finalised 11 cases, issued amended assessments worth over $1 billion, collected tax of over $800 million and estimated future company tax wider revenue effects of over $500 million.[6]

3.11 Indeed, this inquiry also played a role in assisting to resolve at least one long running tax dispute:

> **Mr Konza:** Without referring to any particular taxpayer, generally speaking, if you've worked for years and you've got a deal that's 99.9 per

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3 Mr Chris Jordan, Commissioner of Taxation, Australian Taxation Office, *Committee Hansard*, 22 August 2017, p. 49.

4 Australian Taxation Office, *Submission 139.2*, p. 3.

5 Mr Chris Jordan, Commissioner of Taxation, Australian Taxation Office, *Committee Hansard*, 2017–18 Budget Estimates, 30 May 2017, p. 36.

6 Australian Taxation Office, *Submission 139.2*, p. 3.

> cent done and you've got a major public hearing coming up and there's only the last 0.1 to do, you'd be burning the night oil just to fix those things up. That would seem to be a perfectly human thing to try and do.
>
> **CHAIR:** It sounds like the hearing today has actually performed a benefit in that regard.
>
> **Mr Konza:** We have appreciated the Senate's interest in this topic the entire time, and I think the commissioner opened his speech by saying that.[7]

3.12 Mr Jason Ward, spokesperson for the Tax Justice Network Australia, offered an assessment of progress to date:

> Australia, thanks to this committee, public pressure and solid work by the ATO, has made significant progress in reigning in some of the worst corporate tax avoidance. However, much more needs to be done.[8]

3.13 Dr Mark Zirnsak, Director of Social Justice at the Uniting Church of Australia, Synod of Victoria and Tasmania, provided another perspective on the potential impact of recent reforms:

> The fact that tax advisers scream so loudly about the increased penalties suggests that they will probably have some impact.[9]

Multinational tax avoidance concerns remain

3.14 Despite the progress made, some stakeholders were concerned that more was needed to address multinational tax avoidance. While noting that initiatives such as the MAAL and the DPT had led some multinationals to restructure their Australian operations, Associate Professor Antony Ting raised some troubling comparisons:

> Although Google and Facebook have reported significantly more profits in Australia, the profit margins of the local companies remain very low compared to their worldwide groups. For example, the net profit margin of Google Australia was nine per cent in Australia, while for the group was a whole the profit margin was 22 per cent. The numbers for Facebook are more dramatic. Facebook Australia's net profit margin was one per cent in Australia, while the group's net profit margin was 37 per cent. Of course, a company might have different profit margins in different countries for genuine commercial reasons…These two examples suggest that, while the MAAL is achieving its objectives, it alone is unlikely to be enough.[10]

3.15 Dr Zirnsak also advocated for continued vigilance to address multinational tax avoidance loopholes:

> The issue here is that corporations, which have been used to dodging or cheating on their taxes for a long time and that's part of their culture, are not just going to give up because the government makes certain reforms in

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7 *Committee Hansard*, 22 August 2017, p. 61.

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

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

10 Associate Professor Antony Ting, *Committee Hansard*, 4 July 2017, p. 22.

> some areas. They are always going to look for the loophole and the next strategy they can adopt to avoid paying the taxes they should be paying. This is going to require sustained effort; there is a need to block all the loopholes and to be vigilant as to what the next game might be.

3.16 Dr Zirnsak went on to draw an analogy between multinational tax avoidance and water:

> …this is bit like water—it's going to run down the path of least resistance, basically—so if you leave any loopholes anywhere, then you can expect there will be a lot more activity going on in those spaces over time.
>
> …
>
> Things have moved very quickly, but…there are still a lot of measures that need to go to close all the loopholes and fix the system, and there will still need to be vigilant after that, because people are paid a lot of money to come up with new and inventive ways to cheat paying their taxes where they should.[11]

3.17 While the MAAL and DPT have been central to some organisations restructuring their operations for taxation purposes, there still remain concerns about the application of transfer pricing principles and ability of multinationals to locate intellectual property assets in low tax jurisdictions.

3.18 Central to this debate is the difficulty in attributing value, and taxing rights, to a specific country, when the digital economy spans across many jurisdictions. In the case of online advertising, Dr Zirnsak commented that:

> It is a question of where legitimately should the taxing rights be. You would think that if you're a person advertising here online for something that's happening here, that would seem to be a business activity that is taking place here, and the taxing right should ultimately rest here too. I realise for the digital space it is more complex. If you're advertising something globally across the internet, where does the taxing right reside? Is it with where the person placing the ad is, or does it rest with the company that is hosting the ad? Those are obviously more difficult questions to sort out. But I think it's a question of how does the profit get broken up to give taxing rights.[12]

3.19 The ATO explained how the determination of economic value methodologies had evolved over time:

> There used to be a belief that you just had to go and keep searching until you had found something that was as close a match as you could for a comparable, uncontrolled price for a particular transaction. But what we found is that these companies work hard at making sure they are unique, and it drives them away further from any comparable, uncontrolled price you can find. So you tend to then look at what other companies doing similar types of functions do. And you end up thinking laterally in that way.

11 Dr Mark Zirnsak, *Committee Hansard*, 22 August 2017, pp. 5–6.

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

> But also you end up looking at the functions, assets and risks carried out in Australia and you wind up thinking to yourself, 'Okay, what is the economic value created here in Australia and how does that compare to that economic failure that was created elsewhere?'[13]

3.20 These difficulties in income attribution were obvious when some of the largest multinationals operating in the digital economy acknowledged that advertising services delivered to Australians in Australia but purchased from another jurisdiction would not be considered Australian revenue for tax purposes.

3.21 Google Australia provided an explanation of how revenue is attributed:

> If the Australian subsidiary of the global customer contracted with Google Australia to implement the Australian portion of the campaign, the revenue would be recognised by Google Australia. Google Australia would also be remunerated if people employed by Google Australia played a role in the advertising campaign. If Google Australia did not play any role in the campaign, Google Australia could not earn revenue, as tax law does not allow an entity to earn revenue for work it did not do.[14]

3.22 Facebook provided an explanation of how it attributed value and gave an estimate of how much advertising revenue delivered to Australians was booked overseas:

> Facebook has a centralized sales organization that supports customers not managed by our local entity, and a considerable amount of this support is provided by online tools and materials that are developed by staff working in our US, Ireland and other offices. Consequently, these sales are recorded by Facebook Ireland and Facebook US in the aggregate…the amount of revenue from Australian customers that was not supported by Facebook Australia in 2016 was close to AUD$492 million.[15]

3.23 Under the current tax rules, income for advertising in Australia from offshore is not considered Australian income and, as a result, there is no income tax liability. Google Australian noted that:

> Globally, corporate income tax law requires revenue to be attributed to the entity where value is created, not the geography where a company's products are consumed.[16]

3.24 In response to the examples outlined above, the ATO commented that:

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13 Mr Mark Konza, Deputy Commissioner, Australian Taxation Office, *Committee Hansard*, 22 August 2017, p. 54.

14 Google Australia, *Answers to Questions on Notice*, 22 August 2017, p. 3 (received 10 September 2017).

15 Facebook, *Answers to Questions on Notice*, 22 August 2017, p. 3 (received 15 September 2017).

16 Google Australia, *Answers to Questions on Notice*, 22 August 2017, p. 3 (received 10 September 2017).

> We will always make sure the economic value of activities carried out in Australia is appropriately rewarded in Australia. However, the MAAL does not change international tax law. International tax law says that, if you are doing business with another country, you are not taxed on that income in that other country; you are taxed in your home country.
>
> …
>
> If you're not doing business in the other country—that is, if you don't have a permanent establishment or a branch located in that other country—then you are not taxed.[17]

Calls for Australia to continue unilateral action

3.25 Views were mixed on the decision of the Australian Government to take what could be perceived as unilateral action ahead of a consensus through the BEPS Project. Professor Richard Vann, supporting the multilateral approach, cautioned that:

> …Australia is breaking out, going ahead of the consensus and grabbing the money when countries have not agreed between themselves who is entitled to that money…What you do in tax can affect trade and other things, so you just need to be cautious.
>
> …
>
> So I think there is problem there that we are doing things that are beyond the consensus in some people's eyes.[18]

3.26 Professor Vann also warned about the risk of double taxation where unilateral action to increase tax in one jurisdiction was not acknowledged as legitimate by tax authorities in other jurisdictions:

> …we will not know until people start reacting—not just reacting and saying, 'We don't like it', but reacting in ways like the US, for instance, which has indicated to the UK that it probably will not credit the diverted profits tax in the UK against US multinationals' tax liabilities. Once countries start saying, 'We think your tax isn't covered by the consensus and we don't have to credit it', then you will get double tax, so people coming here will be paying both their home tax and the Australian tax with no reconciliation.[19]

3.27 By contrast, Dr Zirnsak was concerned about the lack of progress made by the OECD:

> Disappointingly, through the OECD base erosion and profit shifting program, we think there's been a significant failure by the OECD to substantially address the issues around transfer pricing, the digital economy and harmful tax practices. That has led to the need for things like the

17 Mr Mark Konza, Australian Taxation Office, *Committee Hansard*, 22 August 2017, p. 55.

18 Professor Richard Vann, *Committee Hansard*, 4 July 2017, pp. 11–12.

19 Professor Richard Vann, *Committee Hansard*, 4 July 2017, p. 13.

> Diverted Profits Tax simply because the multilateral efforts to deal with transfer pricing haven't worked.[20]

3.28 Dr Zirnsak went on to say:

> …the big gap…has been around transfer pricing and artificial debt loading, which the OECD BEPS program really hasn't given us any substantive new initiative on. It's sort of just saying, 'Make the existing rules work better', and I think that globally it hasn't been the experience that that's going to be possible.[21]

3.29 Mr Michael West also strongly advocated for unilateral action:

> Nobody has an interest in seeing anything come of BEPS. Why would you want to conclude it and strike a final agreement when your whole career revolves around junkets to Europe discussing BEPS? The US will never want their companies to pay more tax in Australia—the same for England. Unilateral action is the only answer.[22]

3.30 In response to a question about the need for coordinated solutions to stop multinationals choosing the jurisdictions which suit them best, Mr West commented:

> That is another of the stock-in-trade lines in the tax industry. They say unless we lower the tax rate or we stick to the BEPS program the multinationals will just up and leave… But they are making millions of dollars in this country. If you suddenly started taxing them, why would they leave and go away from a market where they are making money?[23]

3.31 The Community and Public Sector Union (CPSU) advocated for a mix of multilateral and unilateral action:

> The CPSU believes that dealing with tax avoidance by multinational corporations requires a mix of multilateral and unilateral actions. Relying solely on multilateral measures will allow multinational corporations to continue tax avoidance as there are other countries that are willing to design tax laws to allow corporations to engage in cross-border tax avoidance.[24]

Committee view

3.32 The committee acknowledges that progress has been made in addressing multinational tax avoidance which will, over time, address some base erosion and profit shifting risks. That said, the committee acknowledges that there remain significant opportunities for further reform. In particular, the integrity of the system will increasingly rely on the robustness and enforcement of the transfer pricing regime (see below).

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

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

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

23 Mr Michael West, *Committee Hansard*, 4 July 2017, p. 16.

24 Community and Public Sector Union, *Submission 138*, [p. 1].

3.33 The committee's recent efforts have again focused on the digital economy. In the case of digital advertising that can be commissioned and delivered remotely, it seems anomalous that the value created by multinationals through this process and delivered to Australian consumers in Australia is not considered income for Australian tax purposes.

3.34 More broadly, the committee considers further pressure should continue to be applied to multinational enterprises in other sectors, particularly the oil and gas sector and the pharmaceutical industry.

3.35 The committee accepts that multilateral responses to multinational tax avoidance have the greater potential to help restore the integrity of the international tax system. However, there appears to be scope for Australia to continue to take unilateral action to address identified shortcomings in the taxation of multinational operations to protect and enhance Australia's revenue base.

Areas for further action

3.36 Consistent with the themes generally explored throughout this inquiry, the committee considers that further action can be taken to address multinational tax avoidance in the persistent problem areas of debt loading and transfer pricing.

Debt loading and interest deductions

3.37 The vexed issue of debt loading and interest deductions continues to be of deep concern for the committee. While interest deductions are legitimate business expenses, the practice of multinationals loading debt onto Australian subsidiaries—to a level far in excess of the worldwide group debt level—is detrimental to Australian tax revenue.

3.38 According to the ATO:

> Under the thin capitalisation rules, the amount of debt used to fund the Australian operations of both foreign entities investing into Australia and Australian entities investing overseas is limited. The rules disallow a deduction for a portion of specified expenses an entity incurs in relation to its debt finance; that is, its debt deductions.[25]

3.39 While Australia's thin capitalisation rules are intended to reduce the opportunities for multinationals to claim excessive interest deductions, the current rules give multinationals a variety of options to maximise their interest deductions, including safe harbour provisions, 'arms-length' tests and worldwide gearing ratios for determining interest deductions.

3.40 In particular, there appears to be a problem between intergroup debt and real debt. As Associate Professor Antony Ting outlined:

> The issue stems from the fundamental failure of the tax law to distinguish between internally generated intragroup debt interest expense and the real

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25 Australian Taxation Office, *Thin capitalisation*, https://www.ato.gov.au/Business/Thin-capitalisation/ (accessed 20 December 2017).

> interest expense of a group—that is, the group's net third party interest expense. The OECD has repeatedly emphasised that a key objective of the tax law is to prevent interest deductions from exceeding the real interest expense of the worldwide group. The principle of tax laws should firstly be that it allows full deduction of a genuine interest expense. However, it should not allow deduction of an internal interest expense—that which is artificially created for tax purposes.[26]

3.41 Associate Professor Ting went on to highlight the example of Chevron, which claims significant interest deductions on intracompany loans to its Australian operations despite the worldwide group having no external funding:

> …Chevron group, as a whole, has had zero net third party interest expense for many years. So the group as a whole is cash rich. It has no need to borrow any external funds. But Chevron Australia is claiming [AUD]$1.8 billion every year.[27]

3.42 Similarly, ExxonMobil claimed around AUD$600 million in interest and finance charges to related parties in 2016.[28] The Tax Justice Network Australia concluded that:

> Some level of related party debt to finance investments in Australia is expected. However, this appears to be very similar to the Chevron loans which were subject to a federal lawsuit by the ATO and which Chevron has now settled. Exxon's loans have received far less scrutiny, but also appear to be specifically designed to shift profits out of Australia to artificially reduce income tax paid here.[29]

3.43 To some stakeholders, the excessive use of related party loans is not acceptable. For example, the Australian Workers' Union contended, in relation to oil and gas multinationals, that:

> Unless the Australian government is willing to actively scrutinise and/or tighten restrictions on related party loans…the Australian people will continue to have nothing to show for its natural riches except pithy public relations campaigns, decreases in working conditions, a government with empty pockets.[30]

3.44 The committee notes that safe harbour debt test thresholds were introduced in 2014. However, the ATO considers that this change has resulted in the manipulation of thin capitalisation calculations:

> …taxpayers have responded to the reduction of the safe harbour thresholds in a variety of ways. One particular response was to increase the value of their total assets by undertaking revaluations of certain assets either for

26 Associate Professor Antony Ting, *Committee Hansard*, 4 July 2017, p. 22.

27 Associate Professor Antony Ting, *Committee Hansard*, 4 July 2017, p. 22.

28 Tax Justice Network Australia, *Supplementary Submission 136.1*, p. 7.

29 Tax Justice Network Australia, *Supplementary Submission 136.1*, p. 7.

30 Australian Workers' Union, *Submission 161*, [p. 5].

> accounting purposes or for thin capitalisation purposes only. This has had the effect of limiting the impacts of the reductions in the safe harbour thresholds. Total 'thin capitalisation only' revaluations made by 151 taxpayers in 2016 totalled $122 billion. This is significant year on year growth; in 2015, revaluations made by 184 taxpayers totalled $56 billion.[31]

3.45 In May 2018, Mr Jeremy Hirschhorn, Deputy Commissioner ATO commented that 'On review, some of these valuations appear highly optimistic at best'.[32] Indeed, the ATO is reviewing the thin capitalisation arrangements of 27 taxpayers to provide assurance on about two-thirds, approximately $78 billion, of total revaluations from 2015–16.[33] The committee notes that the 2018–19 Budget will belatedly tighten the thin capitalisation rules by requiring entities to align the value of their assets for thin capitalisation purposes with the value included in their financial statements.[34]

3.46 While the problem of debt loading persists in Australia, the United Kingdom has moved to overcome excessive interest deductions from intragroup financing. From 1 April 2017, the United Kingdom has revised its Debt Cap rules to introduce a Fixed Ratio Rule and a Group Ratio Rule. The Fixed Ratio Rule will limit the amount of net interest expense that a worldwide group can deduct against its taxable profits to 30 per cent of its taxable earnings before interest, taxes, depreciation, and amortisation (EBITDA). A modified debt cap within the new rules will ensure the net interest deduction does not exceed the total net interest expense of the worldwide group. The Group Ratio Rule allows a ‘group ratio’ to be substituted for the 30 per cent figure. The group ratio is based on the net interest expense to EBITDA ratio for the worldwide group based on its consolidated accounts. This measure is expected to increase revenue by almost £4 billion over 4 years from 2017–18 to 2020–21. [35]

3.47 The UK approach closely aligns with the OECD BEPS Action Item 4 which aims to limit interest deductions by introducing fixed ratio and group ratio rules (see Appendix 1).

3.48 Transfer pricing of debt, as it relates to the intracompany loans, is considered in the next section.

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31 Australian Taxation Office, *Submission 139.2*, p. 14.

32 Neil Chenoweth, 'Tax Valuations inflated by $66 billion', *Australian Financial Review*, 10 May 2018, p. 12.

33 Australian Taxation Office, *Submission 139.2*, p. 14.

34 *Budget 2018–19: Budget Paper No. 2*, p. 46.

35 HM Revenue and Customs, Corporation Tax: tax deductibility of corporate interest expense, Policy paper, 5 December 2016, https://www.gov.uk/government/publications/corporation-tax-tax-deductibility-of-corporate-interest-expense/corporation-tax-tax-deductibility-of-corporate-interest-expense (accessed 2 November 2017).

Committee view

3.49 The evidence presented throughout this inquiry indicates excessive deductions relating to intragroup debt are a significant issue. Indeed, this issue was highlighted in the inquiry's second report which noted:

> Debt-related deductions span a number of areas of the corporate tax regime, including thin capitalisation, hybrid mismatching and transfer pricing.
>
> …
>
> …the committee believes that a more concerted effort is required to ensure that multinational companies do not employ such practices in order to deliberately avoid paying their fair share of tax in Australia.[36]

3.50 The committee believes that the Australian Government is not doing enough in this area, despite claiming that recent changes to thin capitalisation rules are sufficient. The current structure which allows multinationals to pick and choose which thin capitalisation rule to apply is not consistent with international best practice.

3.51 The committee considers that Australia should be more active in seeking to limit interest deductions and, as such, believes that safe harbour provisions and 'arms-length' tests for calculating interest deductions should be removed. This would leave the worldwide gearing ratio as the only method to calculate interest deductions, meaning that a multinational could only claim up to the average of debt-to-equity ratio across its entire global operations. This approach would simplify the thin capitalisation rules without requiring significant changes to existing legislation as the worldwide gearing ratio is already a feature of these rules.

Recommendation 1

3.52 The committee recommends that the thin capitalisation rules be amended so that the worldwide gearing ratio is the only method by which interest related deductions should be calculated for the purpose of tax treatment in Australia.

Transfer pricing

3.53 Concerns about transfer pricing have been significant and consistent throughout this inquiry. International collaboration through the OECD BEPS project has resulted in little substantive change in methodology but has delivered increased transparency to tax authorities through the introduction of Country-by-Country (CbC) reporting.

3.54 The ATO has been active in progressing transfer pricing disputes across a number of different areas, including in jurisdictional allocation of intellectual property and debt pricing.

3.55 In relation to related party debt pricing, the ATO reported that there was approximately $420 billion in related party loans into Australia during 2015–16. The ATO's efforts to reach agreement with taxpayers on this issue have resulted in

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36 Senate Economics References Committee, *Corporate tax avoidance—Part II: Gaming the system*, April 2016, p. 18.

approximately $75 billion in related party loans transitioning to low risk arrangement, an estimated reduction of $1.4 billion in interest deductions for the year ending 30 June 2018, and an estimated reduction of at least $13.7 billion in interest deductions for the next 10 years. That said, only one-third of related party debt into Australia has been or is currently subject to review activity.[37]

3.56 The ATO considered that its recent success against Chevron has potentially 'changed the game' in this area:

> The judgement in Chevron is one of the most important decisions ever in corporate tax in Australia. Chevron sought to challenge Australia's transfer pricing rules and the appropriate method for establishing an arm's-length interest rate for a related party loan. The withdrawal of the appeal means that the decision is now final. Our initial estimates are that the Chevron decision will bring in more than $10 billion of additional revenue over the next 10 years in relation to transfer pricing of related party financing alone….this case will have direct implications for a number of cases the ATO is currently pursuing in relation to related party financing as well as indirect implications for other transfer pricing cases. These impacts will not be limited to the oil and gas sector; they will be across the entire economy.[38]

3.57 The ATO is also progressing work to address transfer pricing risks in other areas, such as the pharmaceutical industry:

> Transfer pricing is the main risk we are investigating in the pharmaceutical industry. We are examining arrangements to determine whether Australian subsidiaries and their offshore parties are operating under arm's length conditions, such that the income declared reflects the economic contribution of the Australian operation to the Australian, and global, value chain.[39]

3.58 Despite the ATO's positive outlook, Professor Vann considered that recent changes to the OECD transfer pricing rules already require further work:

> On transfer pricing rules, internationally I would try and push harder to get agreement on workable rules. The rules at the moment are very difficult for everyone and cause a lot of costs without much benefit as far as I can see.
>
> …
>
> The 2017 guidelines will be released this week [early July 2017]…That effectively is what we will be applying going forward. But already all the developing countries are unhappy with them. The G20 has already announced this year that they are going to review the resident source conflict not in 2020, when it was originally scheduled, but next year.[40]

37 Australian Taxation Office, *Submission 139.2*, p. 8.

38 Mr Chris Jordan, Australian Taxation Office, *Committee Hansard*, 22 August 2017, p. 50.

39 Australian Taxation Office, *Submission 139.2*, p. 12.

40 Professor Richard Vann, *Committee Hansard*, 4 July 2017, p. 12.

3.59 Rather than tinkering with the current transfer pricing system, Dr Zirnsak argued for a comprehensive overhaul:

> Globally, we have seen that the long-term direction on this is to treat the multinational corporations as a single entity, and then to look at how their profits should be divided between the places they're really doing business rather than on allocating them based on the artificial legal structures they set up for themselves. That's not going to be an easy process. That won't happen quickly, and there are significant risks with that too—that the companies will find new ways to game the new system. But it does appear to match more the reality of what the multinational corporation looks like today.[41]

3.60 The CPSU also argued for a reconsideration of how multinational subsidiaries interact for tax purposes:

> The only effective way to end much of the tax avoidance by multinational corporations is to treat multinational enterprises as a single entity rather than as a group of separate entities transacting with each other.[42]

3.61 And greater transparency would assist in understanding how the transfer pricing system works and what could be improved:

> In the meantime, the transparency measures are the immediate thing to do: being able to see where a company is actually doing its business and where it is booking its profits, which is what the country-by-country reporting aims to achieve. That's going to give us a sense of how big the problem is and how serious it is. Hopefully, that then allows us to move to this shift in the overall global rules.[43]

3.62 Country-by-Country reporting is considered in detail in the next chapter.

Committee view

3.63 Transfer pricing has been a constant issue throughout this inquiry. Both of this inquiry's previous reports highlighted what appear to be obvious flaws in the current transfer pricing rules. The fact that the G20 is already seeking to revise transfer pricing rules so soon after they were amended as part of the BEPS project is also a clear indication that something is not right.

3.64 The committee accepts that transfer pricing is a complex and difficult issue but considers that the current transfer pricing regime does not serve Australia's interests well and the approach to attributing value between countries is working to the benefit of multinationals. It allows multinationals to price gouge Australian consumers and send the vast majority of profits offshore while only paying relatively small amounts of corporate income tax to Australian authorities.

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

42 Community and Public Sector Union, *Submission 138*, [p. 1].

43 Dr Mark Zirnsak, *Committee Hansard*, 22 August 2017, p. 3.

3.65 While Australia's tax administrators have proactively used the tools at their disposal to query, probe and prosecute the structure and operations of multinational entities, there is only so much they can do under the existing transfer pricing regime.

3.66 As there is no indication that recent legislative changes will radically change how transfer pricing principles are applied, it would be reasonable to conclude that foreign-based multinationals will continue to avoid paying their fair share. The committee does not accept that supply activities in Australia represent such a small proportion of overall value creation as is currently argued and considers that the application of transfer pricing principles requires a rethink and overhaul.

3.67 The committee reiterates its previous conclusion that:

> …current transfer pricing principles need to be fully explored and, where necessary, redrafted to ensure that transfer pricing cannot be manipulated to the detriment of Australian tax revenue.[44]

Recommendation 2

3.68 The committee recommends that the government undertake an independent review into the detriment to Australian tax revenue that arises from the current transfer pricing regime, and explore options to modify transfer pricing rules, or other tax laws, to ensure multinational enterprises make the appropriate contribution to Australian tax revenue.

44 Senate Economics References Committee, *Corporate tax avoidance—Part II: Gaming the system*, April 2016, p. 18.

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.[1]

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.[2]

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.[3]

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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.[4]

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.[5]

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.[6]

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.[7]

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.*

$100 million for public companies, multinationals and foreign-owned private companies).[8]

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.[9]

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.[10]

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

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.[11] However, the consultation paper does not suggest that any potential register of beneficial ownership information should be publicly available.[12]

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.[13]

4.17 Many submissions to the Treasury consultation process argued for any register of beneficial ownership to be publicly available and free to access.[14] 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.[15]

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.

> 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.[16]

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.[17]

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.[18]

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.[19]

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.[20]

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.[21]

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.[22]

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.**

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.

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.[23] 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.[24]

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.[25]

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

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.[26]

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.[27]

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.[28]

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.[29]

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.[30]

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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'.[31]

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.[32]

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.[33]

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.[34]

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.[35]

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.[36]

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.[37]

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.[38]

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.[39]

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'.[40] 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.[41]

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.[42] 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.[43] 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.[44]

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.
>
> …
>
> 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, Minster 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.[45]

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.[46]

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.[47]

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.[48]

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.[49]

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.[50]

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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.[51]

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.[52] 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.[53]

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.[54]

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.[55]

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.[56]

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.[57]

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.[58]

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.[59]

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.

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.

Chapter 5

Offshore oil and gas

5.1 Natural resources, including oil and gas, are often regarded as commonly owned and, reflecting this, are subject to payments to government in addition to ordinary taxes on companies. In this chapter, payments directly associated with the extraction of natural resources are referred to as taxes (in particular the Petroleum Resource Rent Tax). However, it is questionable whether these payments should be considered taxes at all.[1] That said, this chapter uses the word 'taxation' to apply to royalties, excise and the PRRT. In general it will not discuss more general aspects of aggressive tax avoidance and minimisation as these are dealt with in the previous chapters and interim reports.

5.2 This chapter:

- presents an overview of the oil and gas industry;
- discusses taxation arrangements in the industry, with an outline of the logic of resource taxation, including excise and royalties, and a description of the design of the PRRT;
- summarises the outcomes of the system in terms of revenue and investment;
- includes some background on public concern about resource taxation and information on other reviews of the current system of taxation;
- discusses the issues that arise in the current system; and
- makes some recommendations for change.

Other reviews

5.3 Issues regarding the structure and administration of oil and gas royalty schemes were highlighted in the 2016 Australian National Audit Office (ANAO) report into the collection of NWS Royalty Revenue. The report found, among other things, that there are some significant shortcomings in the framework for calculating NWS royalties and there is a risk of significant errors in the claiming of deductions.[2]

5.4 The Treasurer announced a review of the Petroleum Resource Rent Tax, crude oil excise and associated Commonwealth royalties on 30 November 2016, to be chaired by Mr Michael Callaghan AM PSM. Mr Callaghan was asked specifically to:

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1 See, for example, Australian Council of Trade Unions, *Submission 165*, p. 3.

2 Australian National Audit Office, *Collection of North West Shelf Royalty Revenue*, ANAO Report No.28 2016–17, https://www.anao.gov.au/work/performance-audit/collection-north-west-shelf-royalty-revenue (accessed 13 July 2017).

> …lead a review into the design and operation of the Petroleum Resource Rent Tax, crude oil excise and associated Commonwealth royalties to provide advice on the extent to which they are operating as intended.[3]

5.5 In announcing the review, the Treasurer said:

> The review will advise the Government to what extent the [PRRT] is operating as it was originally intended, and shall address the reasons for the rapid decline of Australian PRRT revenues. The Government will then refer to these findings and recommendations to reform the PRRT.[4]

5.6 The review dealt with both offshore and onshore operations. It received 77 submissions, which are publicly available on the Treasury website (under the heading Consultation). The review report was released by the Treasurer on 28 April 2017—incidentally, the day of the committee's first hearing on this issue. The report is referred to here as the Callaghan report.[5]

5.7 On 30 June 2017 (the last working day prior to the second hearing on this issue), the Treasurer announced the Government's interim response to the Callaghan report.[6] Treasury published a consultation paper, *Options to address the design issues identified in the Petroleum Resource Rent Tax Review* and invited submissions from the public by 28 July 2017.[7] The submissions have been published.[8]

The state of the industry

5.8 The oil and gas industry is an important part of the Australian economy, through the supply of energy to households and industry, the investment of hundreds of billions of dollars of capital, the payment of taxes to governments, the direct employment of thousands of Australians, and the generation of significant amounts of export earnings.

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3 The Treasury, Review of the Petroleum Resource Rent Tax, https://treasury.gov.au/review/review-of-the-petroleum-resource-rent-tax/ (accessed 14 September 2017).

4 The Hon S. Morrison, Treasurer, *Turnbull Government Review of Petroleum Resource Rent Tax*, media release, 30 November 2016, http://sjm.ministers.treasury.gov.au/media-release/124-2016 (accessed 14 September 2017).

5 The Treasury, *Petroleum Resource Rent Tax Review—Final Report* (Callaghan Report), 28 April 2017, https://treasury.gov.au/review/review-of-the-petroleum-resource-rent-tax/final-report/ (accessed 23 October 2017).

6 The Treasury, *Interim Response to the Petroleum Resource Rent Tax Review*, 30 June 2017, https://cdn.tspace.gov.au/uploads/sites/72/2017/06/Interim-Government-Response-to-the-Petroleum-Resource-Rent-Tax-Review.pdf (accessed 13 July 2017).

7 The Treasury, *Options to address the design issues identified in the Petroleum Resource Rent Tax Review* (the Treasury Options Paper), 30 June 2017, https://treasury.gov.au/consultation/options-to-address-the-design-issues-identified-in-the-petroleum-resource-rent-tax-review/ (accessed 10 April 2018).

8 The Treasury, *Options to address the design issues identified in the Petroleum Resource Rent Tax Review* (the Treasury Options Paper), 30 June 2017, https://treasury.gov.au/consultation/options-to-address-the-design-issues-identified-in-the-petroleum-resource-rent-tax-review/ (accessed 10 April 2018).

5.9 It is worth noting that the industry is largely foreign owned, so it does not pay large dividends to Australian shareholders. It is also capital intensive, so once the initial construction stages are complete it is not paying a large amount of wages or payroll taxes.

5.10 Oil and gas extraction constitutes about 2.0 per cent of Australia's GDP. Industry revenue is approximately $34 billion.[9] The decade from 2004 to 2014 saw an unprecedented resources boom in Australia. In a time of high world prices for minerals and petroleum, there was a huge inflow of investment funds for exploration and capital expenditure. Many of the projects begun at that time are now only just beginning to produce oil and gas.

5.11 While industry output by volume increased at an average 7.6 per cent a year over the last five years, revenue for the industry has fallen at an average of 4.6 per cent a year, in line with reduced world oil and gas prices. However some industry commentators project growth at over 10 per cent a year in coming years.[10]

5.12 In recent years, seven plants to liquefy natural gas for export have come on stream, with a further three in development. Liquefaction makes export of gas feasible. Liquefied natural gas (LNG) is poised to become Australia's biggest export. In 2016, LNG was Australia's fifth biggest export. It constituted 5.4 per cent of exports by value, having grown at an average of 9.6 per cent a year for the previous five years. The value of LNG exports is projected to increase from an estimated $23 billion in 2016–17 to $37 billion in 2018–19. Growth in export earnings will be supported by higher export volumes and, to a lesser extent, higher prices.[11]

5.13 Crude petroleum accounted for another 1.6 per cent of exports in 2016, but it has been falling rapidly.[12]

5.14 Of the $34 billion in industry revenue in 2016–17, $28.5 billion (or 84 per cent) was associated with exports. While the high level of exports is welcome economically, it is becoming controversial in the context of rising domestic gas prices and fears that there will be insufficient gas to power Australian industry.

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9 Australian Bureau of Statistics, *Key Economic Indicators, 2017* Cat. No. 1345.0, GDP: $1,660,145 million; IBISWorld *Oil and Gas Extraction in Australia*, January 2017, industry revenue: $34 billion.

10 IBISWorld, *Oil and Gas Extraction in Australia*, January 2017, p. 4.

11 Department of Industry, Innovation and Science, *Resources and Energy Quarterly*, July 2017, p. 51, https://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyJune2017/documents/Resources-and-Energy-Quarterly-June-2017.pdf, (accessed 6 September 2017).

12 Department of Foreign Affairs and Trade, Australia's trade in goods and services, *Australia's top 25 exports, goods and services, 2016*, http://dfat.gov.au/about-us/publications/trade-investment/australias-trade-in-goods-and-services/Pages/australias-trade-in-goods-and-services-2016.aspx#exports, (accessed 6 September 2017).

5.15 While there are 384 businesses active in the oil and gas extraction industry, over half of the market is accounted for by five companies: Woodside Petroleum Ltd, BHP Billiton Ltd, Chevron Australia Holdings Pty Ltd, ExxonMobil Australia Pty Ltd, and Santos Ltd.[13] BP Developments Australia Pty Ltd, Shell Australia Pty Ltd, INPEX and ConocoPhillips Australia are also significant players.

5.16 Woodside, BHP and Santos are Australian based. The others are foreign owned.

5.17 The industry's performance depends on world energy prices and supply and demand, exchange rates, and the supply of new oil and gas discoveries.

5.18 On a much smaller scale is the petroleum exploration industry. It has revenue of $1.5 billion, and is very dispersed, with no dominant players.[14] The oil and gas extraction industry is its principal customer.

Major projects

5.19 Geoscience Australia states that Australia has approximately 0.3 per cent of world oil reserves, noting that:

> Most of Australia’s known remaining oil resources are condensate and liquefied petroleum gas (LPG) associated with giant offshore gas fields in the Browse, Carnarvon and Bonaparte basins. In addition oil resources are identified in the Perth, Canning, Amadeus, Cooper/Eromanga, Bowen/Surat, Otway, Bass and Gippsland basins.[15]

5.20 The major Australian offshore oil and gas production and exploration projects are located in the Bass Strait, and off the coast of the Northern Territory and Western Australia. Onshore projects are in the area where the borders of South Australia and Queensland meet. In addition, there are reserves of coal seam gas in several locations, with the furthest developments being in Queensland. (See Figure 1.)

5.21 The exploration stage of a petroleum project typically takes more than six years, with up to a further 10 years in project development. Production can last between 10 and 20 years, followed by decommissioning, which in itself is a major undertaking over several years.

Bass Strait

5.22 The Gippsland basin in Bass Strait was developed by BHP in partnership with ExxonMobil in the 1960s. At the peak of production in the early 1980s, the venture was delivering 10 per cent of total Commonwealth revenue. It now meets 40 per cent of Australia's east coast gas needs.[16] The original fields are still producing but as

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13 IBISWorld, *Oil and Gas Extraction in Australia*, January 2017, pp. 4–5.

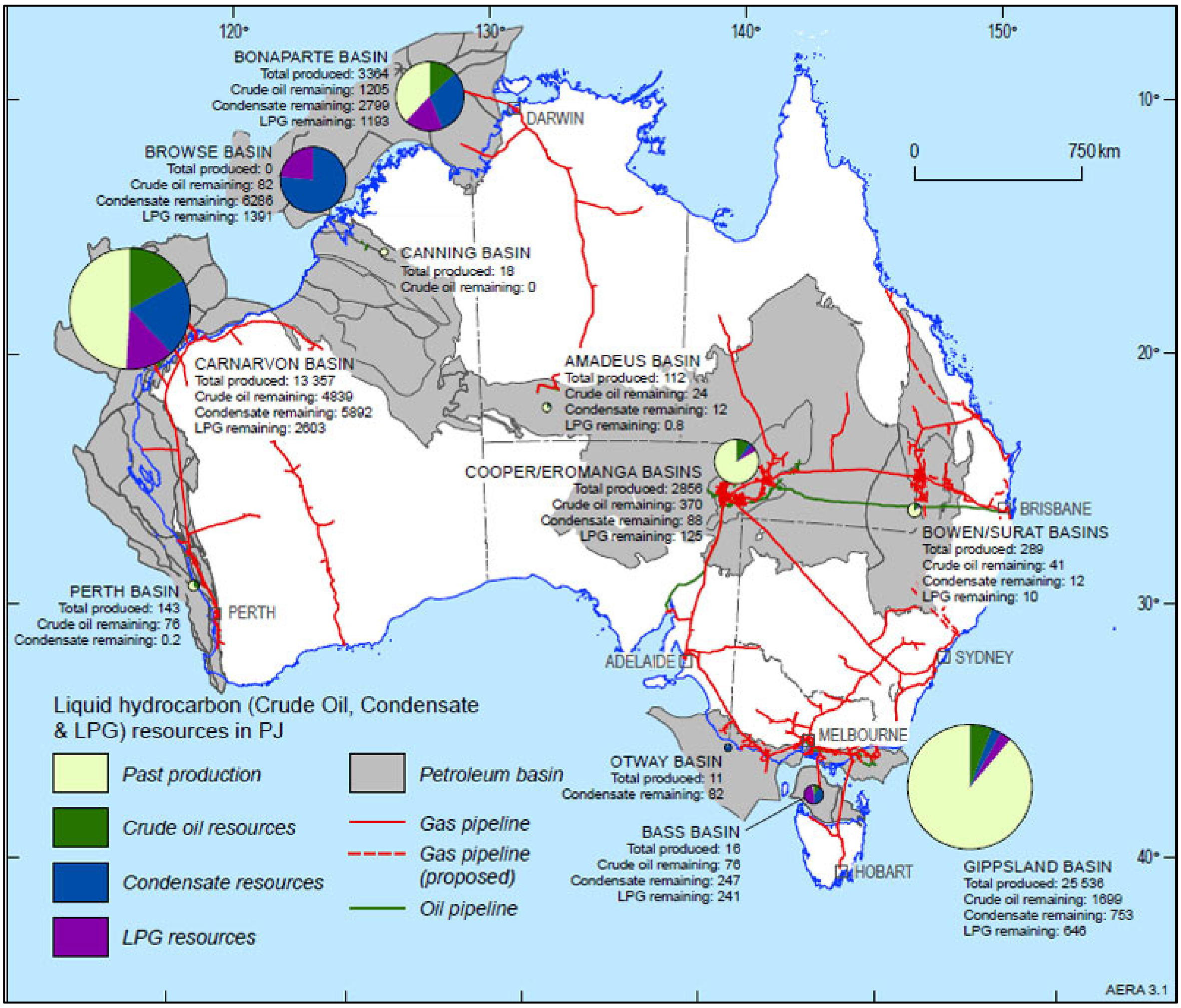
14 IBISWorld, *Petroleum Exploration in Australia*, August 2017, p. 3.

15 Geoscience Australia, Oil, http://www.ga.gov.au/scientific-topics/energy/resources/petroleum-resources/oil, (accessed 6 September 2017).

16 ExxonMobil, *Bass Strait at* 50, http://www.exxonmobil.com.au/en-au/company/news-and-updates/publications/bass-strait-at-50 (accessed 7 September 2017).

indicated in Figure 1, the reserves will come to the end of their life soon. Further projects are being developed there, including the Kipper Tuna Turrum (KTT) project, which uses some of the existing infrastructure, and in which Santos has a 35 per cent share along with BHP Billiton and ExxonMobil. The joint venture is also undertaking new exploration in the area. There is continuing exploration in the Otway basin on the western side of Bass Strait.

Figure 1: Major oil and gas projects



Source: Geoscience Australia, Australian crude oil, condensate and naturally-occurring LPG resources, infrastructure, past production and remaining resources

Carnarvon basin

North West Shelf

5.23 The Woodside-operated North West Shelf (NWS) Project in the Carnarvon basin off the north-west coast was for many years Australia's largest oil and gas development. It is owned in equal shares by Woodside, BHP Billiton, BP Developments, Chevron, Shell Australia and Japan-Australia LNG. It was first explored in the 1970s and developed in the 1980s. It includes the Karratha Gas Plant and other LNG processing facilities, and exports a large part of its production to China and Japan.[17]

Barrow Island

5.24 Oil was discovered on Barrow Island in the 1960s, and it has been the largest onshore oil field in Australia, operated by Chevron.[18]

5.25 The Gorgon gas field is the largest single resource development in Australia. It started LNG production in 2016. It is a joint venture between Chevron (47 per cent owner), ExxonMobil, Shell and several much smaller shareholders. Its LNG plant is on Barrow Island.[19]

Wheatstone

5.26 The Wheatstone project is 64 per cent owned by Chevron, with Kuwait Foreign Petroleum Exploration Company and Woodside each holding 13 per cent. It is a large project with a 30 year life span and began production in October 2017. Most of its product will be exported to Asia.[20]

Pluto

5.27 Woodside developed Pluto from discovery in 2005 to production in 2012. The gas is piped to an onshore LNG plant.[21] There are plans to increase production.[22]

Bonaparte Basin

Darwin LNG

5.28 The Bonaparte Basin is off the north coast of the Northern Territory and Western Australia. Darwin LNG began production in 2006 and is operated by Conoco Phillips. Santos was a founding partner. The companies, who own further exploration permits, are considering (with Origin and others) a multi-field expansion to keep the plant running. Current reserves will run out in 2022.[23]

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17 North West Shelf Project, http://vivid3.blob.core.windows.net/nwsssc/default-document-library/download.pdf?sfvrsn=0 [fact sheet] (accessed 7 September 2017.

18 Chevron Australia, *Barrow Island*, https://www.chevronaustralia.com/our-businesses/barrow-island (accessed 7 September 2017).

19 Chevron Australia, *Gorgon Project*, https://www.chevronaustralia.com/our-businesses/gorgon (accessed 7 September 2017).

20 Chevron Australia, *Wheatstone Project*, https://www.chevronaustralia.com/our-businesses/wheatstone (accessed 10 April 2018).

21 Woodside, *Pluto LNG*, http://www.woodside.com.au/Our-Business/Producing/Pages/Pluto.aspx#.WswaA00UlaQ (accessed 10 April 2018).

22 M. Mckenzie, 'Woodside continues Pluto expansion pursuit', *Business News*, 20 April 2017, https://www.businessnews.com.au/article/Woodside-continues-Pluto-expansion-pursuit (accessed 7 September 2017).

23 E. Swanepoel, 'Darwin LNG expansion to be studied', *Mining Weekly*, 19 April 2017, http://www.miningweekly.com/article/darwin-lng-expansion-to-be-studied-2017-04-19 (accessed 10 April 2018).

Browse basin

5.29 The Browse basin is off north-western Australia. It is in very deep water, so, despite good exploration results, it has been developed later than other areas.

Ichthys

5.30 The Ichthys project is being developed by INPEX, a Japanese company. It will involve initial processing in a floating offshore facility. Most production will then be directly shipped to global markets. Some of the gas will be piped 890 kilometres to onshore processing facility near Darwin. The project will cost US$34 billion. Production was scheduled to commence in March 2018.[24]

Prelude

5.31 INPEX also owns 17.5 per cent of Shell's Prelude development. It will be serviced by a floating LNG plant—'the biggest ship in the world'. The gas prococced will be directly exported. It is envisaged that the plant can be used to exploit other reserves when the current reserves run out. The Prelude project is also expected to commence production in 2018.[25]

Onshore projects

5.32 Large coal seam gas reserves have been discovered in Queensland and to a lesser extent New South Wales. At present the gas is being processed for export at the Curtis LNG, Gladstone LNG and Australia-Pacific LNG projects in Gladstone, Queensland. There are also several other proposals for Coal Seam Gas CSG-LNG plants under consideration for Gladstone and potentially other areas of Queensland.

Summary—Year of project entry into PRRT system

5.33 The Callaghan report lists projects which are producing or near producing:[26]

Project	First Production*	Likely Year Historical Deductions First Recognised in Aggregate PRRT Data
North West Shelf	1984 (domestic gas), 1989 (LNG)	2012-13
Darwin LNG	2006	Not a PRRT project
Pluto	2012	2011-12
Queensland Curtis LNG	2014	2012-13
Gladstone LNG	2015	2012-13
Australia Pacific LNG	2015	2012-13
Gorgon	2016	Likely 2015-16
Wheatstone	Planned for mid-2017	Possibly 2017-18
Ichthys	Planned for late 2017	Possibly 2017-18
Prelude	Planned for 2018	Possibly 2018-19

* Based on first production and sales dates from company websites.
Source: Petroleum Resource Rent Tax Review Secretariat.

24 INPEX, *Ichthys in detail*, http://www.inpex.com.au/our-projects/ichthys-lng-project/ichthys-in-detail/ (accessed 7 September 2017).

25 B. McHugh, 'Shell finally sets the Prelude, largest floating gas facility ever built, on course to waters off WA coast', *ABC News*, 30 June 2017, http://www.abc.net.au/news/rural/2017-06-30/worlds-largest-flng-prelude-on-way-to-australia/8667140 (accessed 7 September 2017).

26 The Treasury, *Petroleum Resource Rent Tax Review—Final Report* (Callaghan Report), 28 April 2017, p. 81 https://treasury.gov.au/review/review-of-the-petroleum-resource-rent-tax/final-report/ (accessed 23 October 2017).

The logic of taxes on oil and gas

5.34 The characteristics of a good tax system are generally said to be:

- equity—those in similar economic circumstances pay similar amounts, and those with greater resources bear a greater burden
- efficiency—in terms both of its effect on economic activity (including stability and certainty for taxpayers) and in terms of the resources required to administer the tax
- simplicity and transparency
- sustainability—which means that it is perceived as fair, and that 'the structural features of the system should be durable in a changing policy context, yet flexible enough to allow governments to respond as required'
- policy consistency—within the tax and transfer system and with the broader policy objectives of government.[27]

5.35 Any system of taxation of resources attempts to balance the right of the owners of the resources—the general public—to a fair return for the finite resources against the right of the resource developers to a fair return on their risky investment. The balance is said to be necessary to ensure that exploration and development continue. This is desirable not only because of the return by way of resources taxes but also because of the economic benefits of resources activity. These benefits include direct employment and taxation of profits, and downstream and spinoff benefits from the activity.

5.36 In general, ownership of minerals including petroleum in Australia rests with governments on behalf of the community. The states and territories own minerals onshore to the three mile territorial limit, and the Commonwealth owns resources beyond the three mile limit and in the external territories.[28] Governments impose charges on oil and gas extraction to ensure that the community receives a benefit from their development. Charges on the extraction of resources in Australia have historically included specific Commonwealth and state government taxes.[29]

5.37 Conceptually, there are three different ways of thinking about taxes on petroleum—excises, royalties and resource rent taxes.

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27 K. Henry (Chair), *Australia's Future Tax System*, Report to the Treasurer, December 2009, p. 15, http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/pubs_reports.htm (accessed 10 April 2018).

28 Industry Commission, *Mining and Minerals Processing in Australia*, vol. 3, Report No. 7, February 1991, p.8, http://www.pc.gov.au/inquiries/completed/mining/07miningv3.pdf (accessed 13 July 2017). There are some exceptions to this generalisation.

29 The Treasury, *Review of the Petroleum Resource Rent Tax: Issues Note*, 20 December 2016, p. 2.

5.38 An ***excise*** can be charged by the Commonwealth on the volume of the resource extracted. This approximates to the community charging a price for the resources. It has the advantage of simplicity. It has the disadvantage that it has to be set at a level where it will not discourage exploration and development if prices are low, which means that if prices are high the community will not share in the windfall.

5.39 Some variations on excise include an element of price. The Australian Government imposes an excise on eligible crude oil and condensate production from coastal waters, onshore areas, and some North West Shelf projects in Australian waters. Excise liability is worked out by applying the relevant crude oil excise rate to the volume weighted average price. The first 30 million barrels of crude oil and condensate from a field are excise exempt. The 'relevant rate' depends on factors to do with when the project was developed.[30]

5.40 ***Royalties*** are usually based on the value of petroleum extracted. They can be levied by the Commonwealth or the states or jointly. Onshore royalties are levied by the states, generally at a rate of 10 per cent of value extracted. In 1967, the Commonwealth and the states agreed on an Offshore Constitutional Settlement. The agreement includes a 60:40 revenue sharing of a 10 per cent royalty on the well-head value. Any royalties exceeding 10 per cent go entirely to the State.

5.41 It is possible for the Commonwealth to waive excise in return for a revenue sharing agreement with a state known as a Resource Rent Royalty. Currently such an agreement exists only for Barrow Island. The revenue is shared 75:25.[31]

5.42 Like excise, royalties can be simple. In some cases, however, they are complicated by the rules governing what can be written off against the value of production. Because they are calculated without regard to profitability, they could be a disincentive to investment in marginal projects.[32]

5.43 A ***resource rent tax*** has a different basis. In economics, a rent is a profit made over and above the return that is necessary for an activity to continue. Thus it makes sense to tax rents because the tax will not distort economic activity. Petroleum prices can vary widely, so it is possible that any one project in some years is highly profitable and in other years only breaks even. While excise and royalties are taxes on production, and company tax is a tax on current profit, a rent tax is a tax on excess (or super) profits.

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30 Department of Industry, Innovation and Science, *Crude oil excise*, https://industry.gov.au/resource/Enhancing/ResourcesTaxation/PetroleumResourceRentTax/Pages/CrudeOilExcise.aspx (accessed 18 October 2017).

31 Department of Industry, Innovation and Science, *Resource Rent Royalty*, https://industry.gov.au/resource/Enhancing/ResourcesTaxation/Pages/ResourceRentRoyalty.aspx (accessed 18 October 2017).

32 Dr Diane Kraal, *Submission 2*, Attachment 2, *The Petroleum Resource Rent Tax 1987: The case for contemporary reform*, p. 23.

5.44 A rent tax has the advantage of being counter-cyclical: when the economy is booming and prices are high, the tax taken is high and may dampen production and investment activity slightly. When the economy is sluggish and prices are low, less tax is taken and there is less dampening effect from the tax.

How the PRRT works[33]

General description

5.45 The Petroleum Resource Rent Tax (PRRT) was introduced in 1987 to replace Commonwealth excise and royalties in offshore developments. In 2012 it was extended to apply to apply to all Australian onshore and offshore oil and gas projects, including the North West Shelf and coal seam gas projects.

5.46 It is project based (rather than company based)—although some trading off among projects owned by an entity is possible. Any entity with an interest in a petroleum project is liable for its proportion of the PRRT on that project.

5.47 Two or more projects may be treated as a single project if the Commonwealth Minister for Resources considers the individual projects are sufficiently related.

5.48 PRRT applies to products as they are extracted, and not to value added. Thus it does not apply to LNG, only to the original gas.

5.49 It is levied at 40 per cent of the net revenues (sales receipts less eligible expenditures) from a project. The basis of this calculation is somewhat different from, and more generous than, the basis for company tax. The amount of PRRT paid is deducted from company income for company tax purposes.

5.50 Eligible expenditures include exploration expenditure and all project development and operating expenditures, but some different treatments apply to these different classes of expenditure.

Closing down expenditures

5.51 Closing-down expenditures, including offshore platform removal and environmental restoration, are also deductible in the year in which they are incurred. If receipts during the year the project is closed down are less than the closing down expenditures, a credit is available, depending on whether the project has previously paid PRRT, for offset against other liabilities owed to the Australian Government.

Carrying forward unused deductions

5.52 Undeducted exploration expenditure incurred after 1 July 1990 is transferable to other projects with a taxable profit if, at the time the expenditure was incurred, the projects were held by the same entity. Similar rules apply in relation to the transfer of expenditure between projects held by companies in a company group.

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33 The material in this section is from Department of Industry, Innovation and Science, *Petroleum Resource Rent Tax (PRRT)*, https://industry.gov.au/resource/Enhancing/ResourcesTaxation/PetroleumResourceRentTax/Pages/default.aspx (accessed 18 October 2017).

5.53 In years where eligible deductions are greater than revenue, the undeducted amounts are compounded annually at set 'uplift' rates. The compounded amount is then deducted against assessable receipts in the following year. The compounding with 'uplift' is intended to offset the risk that a company will not be able to use the deduction.

5.54 The uplift rate for exploration expenditure is 15 percentage points above the Australian Government long term bond rate (LTBR), except that exploration expenditure incurred more than five years before the issue of a production licence is uplifted at the inflation rate.

5.55 The uplift rate for other expenditure, including capital and operating expenditure, is 5 percentage points above the LTBR.

5.56 All exploration expenditure incurred in areas covered by the PRRT is deductible against all PRRT liable projects held by that entity subject to compliance with anti-avoidance provisions. In the case of a company in a company group, the expenditure will be deductible against all PRRT liable projects held by the group. This ensures that the pattern of exploration is not affected by taxation arrangements. Non-exploration expenditure is not transferable between projects.

5.57 Where exploration expenditure has been transferred between projects, compounding is set by reference to the date of the production licence of the receiving project. If there is more than one project to which exploration expenditure can be transferred, the expenditure must be transferred to the project with the most recent production licence.

5.58 Exploration expenditure in areas designated as frontier between 2004 and 2008 are eligible for 150 per cent uplift under the PRRT.

5.59 There are expenditures that are not deductible. These include financing costs, private override royalty payments, income tax, goods and services tax, cash bidding payments and certain indirect administrative costs.

5.60 There is an order of deduction for different categories of expenditure. General project expenditure is deducted first, then exploration expenditure incurred within the project, closing down expenditure, and finally exploration expenditure that is transferred from another project.

5.61 Royalties and excise payments are credited against PRRT liability.

2012 starting bases

5.62 With the extension of the PRRT on 1 July 2012 to onshore petroleum interests and interests in the North West Shelf project, projects that existed as at 2 May 2010 (when the new arrangement was announced) were given a ‘starting base amount’. The starting base is intended to provide a shield against a PRRT liability in respect of projects that were not subject to the PRRT when they were established. Once a petroleum interest becomes a petroleum project, the starting base amount is immediately deductible. Any unused amounts are uplifted by the LTBR plus five per cent each financial year. Starting base amounts are not transferable between projects.[34]

Revenue from taxation of oil and gas companies

5.63 The Australian Petroleum Production & Exploration Association (APPEA) has estimated the level of company and resource tax payments made by the Australian oil and gas industry. APPEA notes that tax payments generally averaged between $7 billion and $8 billion per annum between 2007–08 and 2013–14 but were lower in 2014–15. It notes that the industry paid $5 billion in tax in that year even though it operated at a loss because of a significant reduction in commodity prices and the continued decline in petroleum liquids production.[35]

5.64 This figure has now been updated to a combined loss of $4.5 billion, with taxes paid of $4.25 billion. Total revenue fell from $29.99 billion to $23.73 billion.[36] This was partly due to lower prices and lower production, but also included non-cash depreciation and amortisation costs. These have increased in recent years because of the massive investment during the boom. One commentator noted:

> So operating cash profits were still coming in, even after interest and tax payments were made. When non-cash depreciation and amortisation costs are taken out, the industry made an after-tax profit of $5.11bn in 2015–16, down from $9.83bn in 2014–15 and the lowest since 1999–2000.[37]

5.65 The Treasury in its Issues Note for the Callaghan review tracked the fall in PRRT takings from an average of 0.2 per cent of GDP through the 1990s and early 2000s, to an average of 0.12 per cent of GDP from 2002–03 to 2015–16, and around 0.05 per cent over the forward estimates. Crude oil excise collections averaged 0.05 per cent of GDP from 2000–01 to 2012–13, but have been declining since and are now very small. Commonwealth royalties have tracked similarly, from an average of 0.04 per cent of GDP for the period from 2000–01 to 2011–12 to less than half that now.[38]

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34 Australian Taxation Office, *Submission 139, Supplementary Submission*, p. 6. (This supplementary submission is the Australian Taxation Office's submission to the Callaghan review).

35 APPEA, *Submission 137*, p. 2.

36 APPEA, 'Oil and gas industry financial performance reflects challenging operating environment', media release, 23 October 2017, https://www.appea.com.au/media_release/oil-and-gas-industry-financial-performance-reflects-challenging-operating-environment/ (accessed 23 October 2017).

37 M. Chambers, *Oil's not well: $4.5 billion loss for sector*, *The Australian*, 23 October 2017.

38 The Treasury, Review of the Petroleum Resource Rent Tax, Issue Note, 20 December 2016, pp. 6–7, https://static.treasury.gov.au/uploads/sites/1/2017/06/R2016-001_PRRT_dn.pdf (accessed 23 October 2017).

5.66 There is some volatility in the estimates, because of fluctuating world energy prices and exchange rates. For example, the estimate of PRRT revenue for 2016–17 varied by $130 million (14.1 per cent) between the 2016–17 Mid-Year Economic and Fiscal Outlook in December 2016 and the 2017–18 Budget in May 2017; for the estimate of revenue for 2017–18, the variation in the two estimates (that is, between MYEFO and Budget) was 11.2 per cent.[39]

5.67 There has been a change in the mix of production. Resources from older projects, which had deducted all their expenses and were paying PRRT, are becoming exhausted. New LNG projects, which have incurred a lot of deductible expenditure, are now coming on stream, but they are not yet paying PRRT.[40]

Issues in the taxation of oil and gas

Public concern about the level of taxation

5.68 The taxation of resources in Australia has been controversial at least since gold miners' monthly licence fees were a precipitating factor in the Eureka Rebellion of 1854. The resources are regarded as belonging to the community at large, but those extracting them have to go to considerable effort and expense, at risk, before they have any returns that can be taxed. A part of the solution to the unrest at Eureka was the replacement of the licence fee with an annual miner's right and the imposition of a tax on the value of gold exported.

5.69 Interest in the management of petroleum resources is not confined to Australia. There is a large economic literature on the 'resources curse' which suggests that resource wealth can damage an economy directly through macroeconomic effects and indirectly through corroding its institutions.[41] Some of the interest is more specifically focused on lobbying by the mining industry: for example, Publish What You Pay Australia is part of a global initiative campaigning in 40 countries for transparency and accountability in the mining and oil and gas industries.[42]

5.70 Concerns about the structure and operation of oil and gas taxation schemes in Australia have been voiced by various stakeholders. For example, the International Transport Workers' Federation (ITF) claims that of the top five LNG exporters in 2014, Australia has the lowest government revenue from oil and gas (table 1). The ITF

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39 Commonwealth of Australia, *Budget Strategy and Outlook: Budget Paper No. 1 2017–18*, pp. 5-22 and 5-23.

40 Mr Jeremy Hirschhorn, Deputy Commissioner, Public Groups, Australian Taxation Office, *Committee Hansard*, 3 July 2017, p. 47.

41 For example, J. A. Frankel, *The natural resource curse: a survey*, Working Paper 15836, National Bureau of Economic Research, March 2010, http://www.nber.org/papers/w15836; F. Menezes, *The 'curse' of the resources boom: could our wealth be our ultimate weakness?* The Conversation, September 20, 2012, https://theconversation.com/the-curse-of-the-resources-boom-could-our-wealth-be-our-ultimate-weakness-9635 (both accessed 11 July 2017).

42 Publish What You Pay Australia, *Submission 149*, p. 1.

released several briefing papers in 2015 and 2016 that outlined the oil and gas taxation issue.[43]

5.71 The ITF notes that, with the exception of the North West Shelf (NWS), Australia has no royalty payable on offshore oil and gas production in Commonwealth waters. The PRRT is not a royalty payment but a profit-based tax. While the tax rate is set at 40 per cent, significant investments in development and exploration mean that the PRRT is not forecast to collect any revenue on LNG production for decades.[44]

Table 1: Top Five LNG Exporters in 2014—Government Revenue from Oil and Gas

Rank among LNG exporters, 2014	**Country**	**Oil and gas production ('000 oil-equivalent barrels**	**Government revenues from oil and gas (US$m, 2014)**	**Government revenues as % of production values, 2014**
1	Qatar	1 838 018	$88 246	4.80%
2	Malaysia	660 746	$20 286	3.07%
3	Australia	511 357	$7 275	1.42%
4	Nigeria	1 104 559	$36 952	3.35%
5	Indonesia	772 666	$25 824	3.34%

Source: International Transport Workers' Federation, *An International Comparison of Australian Government Revenues from Oil and Gas Production*, November 2016, p. 2.

5.72 The Tax Justice Network Australia (TJN-Aus) has conducted a sustained campaign arguing that the industry does not pay its fair share of tax.[45] It too notes the Australian Government's revenue from oil and gas production, adjusted for volumes, is significantly lower than other large LNG exporters.

5.73 TJN-Aus contends that the PRRT was designed for a very different petroleum industry, and suffers from design flaws that make it excessively generous and not fit for purpose in an industry dominated by integrated gas-to-LNG production. However,

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43 *Australian LNG Exports to Boom, Tax Revenue is a Bust*, October 2015 and updated September 2016, available at https://static1.squarespace.com/static/574507cde707eb332424b26a/t/582d44d3b3db2bc03f850780/1479361749065/ITF+PRRT+Brief+2+Qatar+-+Sept2016.pdf; and *An International Comparison of Australian Government Revenues from Oil and Gas Production*, November 2016, available at https://static1.squarespace.com/static/574507cde707eb332424b26a/t/582d463d2994ca1039bbe7e7/1479362112693/ITF+PRRT+Brief+3+nov2016.pdf (both accessed 11 July 2017); *Chevron's Tax Schemes: Piping Profits out of Australia?*, September 2015, available at http://www.world-psi.org/en/chevrons-tax-schemes-piping-profits-out-australia (accessed 4 September 2017).

44 International Transport Workers' Federation, *An International Comparison of Australian Government Revenues from Oil and Gas Production*, November 2016, p. 2.

45 Tax Justice Network Australia, *It's time to fix the failed petroleum tax*, http://www.taxjustice.org.au/prrt (accessed 11 July 2017).

even removing opportunities for profit shifting and incentives for inefficient allocation of capital is unlikely to generate PRRT revenue for some time given the industry has already accumulated $238 billion in PRRT credits (see below).[46]

5.74 The advocacy organisation GetUp! has also campaigned on the issue of taxation of petroleum companies. It commissioned academic work, which it furnished as an attachment to its submission, which suggested that faults in the design of the PRRT and inappropriate debt loading of Australian operations meant that petroleum companies were not paying a fair share of tax.[47]

5.75 Oxford academic Dr Juan Carlos Boué has calculated that if Australia had applied the same effective tax rates to its petroleum resources as did Denmark or Norway, it would have reaped an additional US$71 billion or US$84 billion respectively in the period 2008–15. Dr Boué concedes that the cost structures are not identical—unit costs are actually higher in Denmark—so the comparison is not simple. But he suggests that the onus of proof should be on those who suggest the comparison is not reasonable.[48]

5.76 Several submissions have pointed to the revenue effects of the PRRT arrangements. For example, the Community and Public Sector Union, referring to modelling by forecasting group Macroeconomics, said:

> There is a growing and widespread acceptance that Australia did not receive the full benefit it should have from the recent mining boom and this mistake should not be repeated. The CPSU notes modelling that shows if Australia had used the windfall from the mining boom to create a sovereign wealth fund, it would now have a $290 billion dollar fund.[49]

5.77 Various commentators have argued that the benefit Australia gets from its oil and gas is too little.[50] On the other hand, Dr Craig Emerson, one of the architects of the original tax, said:

> I think the story has been a pretty good one. I calculate that over its lifetime petroleum resource rent tax has collected around $33 billion for the people of Australia.[51]

5.78 To some extent the question of taxation of the industry has been seen in the context of domestic price rises and threatened shortages resulting from over-ambitious export contracts.

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46 Tax Justice Network Australia, *Submission 136*, p. 3.

47 GetUp!, *Submission 134*.

48 Dr Juan Carlos Boué, *Submission 158*, pp. 11–12.

49 Community and Public Sector Union, *Submission 138*, [p. 3].

50 See for example H. Aston, 'Shell and Chevron didn't pay any petroleum resource rent tax', *The Age*, 18 December 2015.

51 The Hon. Dr Craig Emerson, *Committee Hansard*, 4 July 2017, p. 2.

Compliance with the PRRT

5.79 The Australian Taxation Office reports that compliance with the PRRT is very good.[52] This is consistent with the view in the industry that the tax is well designed and functions well:

> For 30 years, the Commonwealth's approach to taxing the oil and gas industry has been based on some fundamental and, we think, pragmatic principles. It is more efficient and, over the life of resource projects, more lucrative to tax profits than production. Giving investors confidence they can achieve an appropriate risk adjusted rate of return will maximise investment and therefore, over time, tax revenues. Once projects recover their costs, achieve appropriate returns, resource taxation can be applied at far higher rates than a crude royalty or excise without deterring investment. In a nutshell, the most effective approach is to tax heavily economic rent rather than tax lightly production.[53]

5.80 Similarly, companies support the tax:

> From Woodside's perspective, the PRRT is operating as intended, delivering $200 billion worth of projects and a fair return to Australians for their resources, ensuring projects are developed, jobs are created and taxes are paid. The current regime has supported, and continues to support, the development of economically challenging projects. Under more onerous fiscal settings, these projects would likely not be developed…[54]

5.81 Dr Juan Carlos Boué agrees that the PRRT is working as it is designed to, but is less sanguine:

> …the alarming downward trend in petroleum fiscal revenues that has featured so prominently in Australian public debate of late…is not necessarily a consequence of tax avoidance and optimisation practices… Rather, the paltriness of the fiscal receipts that the Australian government is currently getting (and is likely to get in future) in connection with the exploitation of the country’s hydrocarbon resources should be seen as a design feature of the Australian fiscal regime currently in force…[It] is producing exactly the sort of fiscal outcomes that it was designed and intended to produce, and will continue to do so in the future unless the Australian government changes tack by radically overhauling this fiscal regime.[55]

Design of the PRRT

5.82 Issues of the design of the PRRT have been canvassed thoroughly in the Callaghan report and in submissions to that review as well as to this inquiry. It is

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52 Mr Jeremy Hirschhorn, Deputy Commissioner, Public Groups, Australian Taxation Office, *Committee Hansard*, 3 July 2017, p. 51.

53 Dr Malcolm Roberts, Chief Executive, APPEA, *Committee Hansard,* 28 April 2017, p. 10.

54 Woodside Energy Ltd., *Submission 130*.

55 Dr Juan Carlos Boué, *Submission 158*, p. 1.

beyond the capacity of this inquiry to deal with them in detail. What follows is a high level summary which attempts to explain the dimensions of each issue.

Deductions: uplift rates

5.83 Undeducted expenses are carried forward with an 'uplift factor'. For project expenses, the uplift factor is the long term bond rate (LTBR) plus 5 per cent; for exploration expenses, it is the LTBR plus 15 per cent. As a witness observed, this means that the value of undeducted exploration expenses can double in four years.[56]

5.84 The original rationale for the uplift factors was to compensate the companies for the risk that they would not be able to use the deductions.[57] However, there was some ambiguity at the time the tax was introduced.[58] Uplift factors are understood by the sector as a compensation for the riskiness of the industry. For example:

> The principle is that the companies need that assurance, if you like, that there is a reasonable risk adjusted rate of return on the costs that they have accumulated, because there is a very long payback period, so for many years the costs that you have incurred are not recovered, so they are carried forward. To ensure that there is that risk adjusted rate of return available to the businesses, there is an uplift factor applied…The compounding rate is there to, in fact, reflect the risk of the activity.[59]

5.85 The idea that companies should be protected from risk is contested by the Uniting Church:

> The [Justice and International Mission] Unit's concern is that it makes the community share the risk with the corporations no matter how badly they manage their exploration activities. Many other businesses take risks and if they fail and make no profit, then they have to carry their loss as there is no profit to claim deduction against. It is unclear why it is so important that gas corporations be able to get tax deductions for all exploration activities, no matter how poorly conceived or carried out.[60]

5.86 Exploration costs are also transferable between projects within a company or group. This further reduces the risk that the deductions will not be used—although it can also mean that the deductions are used earlier, instead of compounding:

> This transferability of exploration deductions is one of the factors that is holding PRRT payments down now, but one positive out of it all is that it is

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56 Mr Jason Ward, *Committee Hansard*, 28 April 2017, p. 6.

57 Callaghan Report, Chapter 4.2.

58 Callaghan Report, p. 71; see also The Hon. Dr Craig Emerson, *Committee Hansard*, 4 July 2017, p. 4.

59 Dr Malcolm Roberts, Chief Executive, APPEA, *Committee Hansard*, 28 April 2017, p. 17.

60 Uniting Church in Australia, Synod of Victoria and Tasmania, Justice and International Mission Unit, submission to Treasury on *Options to address the design issues identified in the Petroleum Resource Rent Tax Review*, p. 3, https://treasury.gov.au/consultation/options-to-address-the-design-issues-identified-in-the-petroleum-resource-rent-tax-review/ (accessed 10 April 2018).

> helping take the deductions out of the system before they continue to compound and can hold down and lower future PRRT payments.[61]

5.87 Transferability has become more significant in the light of the starting bases created with the 2012 legislation (see below).

Order of deductions

5.88 The order in which expenses are deducted can make a big difference to tax liability. As a project comes on stream and generates profits:

> …the general order of deductions is that you deduct own project expenditure first and then when you become cashflow positive you have got a PRRT liability. But if you have exploration in other projects then that transfers to that profitable project to be deducted and, under the rules, it transfers to the project with the most recent production licence that is profitable.[62]

5.89 Thus the deductions with the highest compounding rate can be kept for longer.

5.90 There is a large stock of deductions that will be acquitted ahead of PRRT payments. It has increased very rapidly recently, from $18 billion in 2011–12 to $188 billion in 2014–15 and $237 billion in 2015–16. A good part of the increase is due to the extension of the PRRT to the North-West Shelf and onshore projects. The deductible expenditure includes royalties and excise already paid and past exploration expenditure, as well as starting base expenditure. Of the total, almost half are non-transferable to other projects, although they can be carried forward at the relevant uplift rates.[63]

Starting bases

5.91 There has been a good deal of criticism that the starting bases allocated to existing projects being drawn into the PRRT in 2012 were too generous. The starting bases began with the market value of the projects, including the value of resources: this was a proxy for capital costs. They were calculated at a time when the oil price was high, so they were very large. In effect they mean that the North-West Shelf and the onshore gas projects will not pay PRRT, unless the oil price increases dramatically.[64]

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61 Mr Michael Callaghan, *Committee Hansard,* 3 July 2017, p. 7.

62 Mr Geoff Francis, Head of Secretariat, Petroleum Resource Rent Tax Review, Department of the Treasury, *Committee Hansard,* 3 July 2017, p. 15.

63 Callaghan Report, p. 81.

64 Mr Michael Callaghan, *Committee Hansard,* 3 July 2017, pp. 6–7; Mr Noel Mullen, Deputy Chief Executive, APPEA, *Committee Hansard,* 3 July 2017, p. 25.

5.92 One reason for the generosity of the starting bases was the need to allow for the fact that onshore projects would still be subject to state government royalty charges. It was not intended that projects would pay both royalties and PRRT.[65]

5.93 There is an anomaly in allowing the project valuation, including the value of the resources, as part of the tax-free starting base, since the value of the project includes the future income stream from the resources and it is thus by definition PRRT free, even if it generates an otherwise taxable profit after royalties. The Callaghan Report says:

> The review's modelling confirms that transitioning projects are not expected to pay PRRT under existing arrangements even at average oil prices of $US100 per barrel to 2050.[66]

Gas transfer pricing

5.94 Gas is usually converted to LNG in an integrated operation. The PRRT is levied on the value of the unprocessed resource. This cannot be the sale price, as it is the LNG that is sold. This means that a notional point of transfer and a method for attributing a price have to be identified. This is a highly technical matter:

> The consultation paper released on Friday on options to address the design issues in the PRRT notes that numerous parts of system are opaque. For example, there is no transparency on how the gas transfer price is calculated.[67]

5.95 Similarly, Mr Lance McCallum from the Australian Council of Trade Unions expressed concern regarding how the gas transfer price is calculated:

> To further increase the transparency of the PRRT, we think that the value and calculation method of wellhead gas should also be made public and that the current practice, where prices are calculated behind closed doors and where there is no market really to compare with these is inappropriate.[68]

5.96 The method currently used is the residual pricing method. Dr Diane Kraal of Monash University has summarised the calculation as follows:

> (i) Downstream: uses the Net Back method to determine a gas price. A price is calculated by taking the LNG sales price and multiplying by gas volumes, less downstream costs that include the liquefaction plant. The net result is divided by gas volumes.

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65 Mr Anthony Neilson, Chief Financial Officer, Santos Ltd, *Committee Hansard*, 3 July 2017, p. 41; Mr Michael Callaghan, *Committee Hansard*, 3 July 2017, p.12.

66 Callaghan Report, p. 85.

67 Ms Jessie Cato, National Coordinator, Publish What You Pay Australia, *Committee Hansard*, 3 July 2017, p. 30.

68 Mr Lance McCallum, Australian Council of Trade Unions, *Committee Hansard*, 14 March 2018, p. 12.

(ii) Upstream: uses the cost plus method to determine a gas price. A price is calculated by adding all upstream costs from the wellhead to the boundary of the liquefaction plant, and dividing by gas volumes.

(iii) The final step is to add together the calculated gas prices from upstream and downstream, and divide by two to derive the 'gas transfer price'.[69]

5.97 There appears to be agreement that gas is being undervalued for tax purposes and the issue needs to be addressed:

> …the gas transfer price method as prescribed by the PRRT regulations should be put under scrutiny. The gas transfer price method is flawed, leading to an underpayment of PRRT, thus disadvantaging the community.[70]

5.98 Mr Michael Callaghan warned that this could entail a significant change to how the tax works:

> The arrangements that have been developed under the PRRT now for the gas transfer-pricing point are very complex. Looking at them, the conclusion is that they do need to have another hard [look] at [them] to ensure they are consistent with getting this equitable return. But the nature of those changes could be very substantial in terms of the impact on the industry.[71]

5.99 Dr Diane Kraal discusses the gas pricing mechanism in some depth. She concludes that the current method, the residual pricing method, should be replaced by the net back method. This would start with the LNG price and deduct the costs that had been incurred. It would be simpler and more transparent. She suggests that this method should be applied to all gas extracted in future, not just that from new projects. This is the method that is used in the North West Shelf royalty calculation.[72]

Incentive effects

5.100 A central theme in the development of the PRRT is the balance between a proper return to the community and maintaining incentives to discover and develop Australian resources. In particular, arrangements for uplift and transferability of deductions were intended to reduce risk and encourage exploration:

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69 Dr Diane Kraal, submission to Treasury on *Options to address the design issues identified in the Petroleum Resource Rent Tax Review*, p. 8, https://treasury.gov.au/consultation/options-to-address-the-design-issues-identified-in-the-petroleum-resource-rent-tax-review/ (accessed 10 April 2018).

70 Dr Diane Kraal, *Committee Hansard*, 3 July 2017, p. 36; see also Dr Diane Kraal, *Submission 129*, Attachment 2; Callaghan Report, pp. 88–95.

71 Mr Michael Callaghan, *Committee Hansard*, 3 July 2017, p. 3.

72 Dr Diane Kraal, submission to Treasury on *Options to address the design issues identified in the Petroleum Resource Rent Tax Review*, p. 1, pp. 8–13, https://treasury.gov.au/consultation/options-to-address-the-design-issues-identified-in-the-petroleum-resource-rent-tax-review/ (accessed 10 April 2018).

> That is the very reason that we say transferability of exploration is important for Santos. It gives us an incentive to explore and we are able to recover that exploration in other projects.[73]

5.101 There was a huge investment in resources in the period 2002–2012, which resulted in big deductions to be carried forward. However, Mr Graham Salmond of BHP observed that although the deductions regime appears generous there is in fact little current investment in exploration, and this does not bode well for the future of the industry:

> We talk about the attractiveness of some of the uplifts and the transferability associated with exploration. While it may appear attractive on the face of it, it is not actually attracting exploration activity, which is more alarming.[74]

5.102 It is possible that transferability creates a distortion such that firms already in the PRRT system actually have lower costs than newcomers, and this could deter some exploration by new participants in the industry.[75]

5.103 The impact of the design of the tax, which smooths the effects of commodity prices for the firms, could be to encourage production which was not timed to deliver the best return for the community:

> The [Justice and International Mission] Unit fears the current design of the PRRT is to stimulate exploitation of Australia's non-renewable oil and gas reserves as soon as possible, rather than across a period of time when the return to the Australian public would be greatest. Based on the best available long-term predictions of demand for natural gas and natural gas pricing, the PRRT appears to dud the Australian public in favour of foreign multinational corporations.[76]

Designed for oil, not gas?

5.104 The original design of the tax was for oil projects, which are very profitable for a relatively short period. Today's major projects are gas projects, which have longer lives but smaller profits. This makes a difference to the existence of rents:

> The PRRT was designed for the oil industry. If you look at the production profile of oil, it spikes up and that is where the secondary tax, the PRRT, comes in. It grabs the super-profits. That is the nature of the production profile of the oil industry. With the gas industry, it is a flat production profile. There are no spikes and, generally speaking, there are no super-profits.[77]

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73 Mr Michael Lawry, Tax Consultant, Santos Ltd, *Committee Hansard*, 3 July 2017, p. 43.

74 Mr Graham Salmond, General Manager Australia, Petroleum Australia Production, BHP Billiton, *Committee Hansard*, 28 April 2017, p. 68.

75 This is discussed in the Callaghan Report, pp. 74–5.

76 Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting church in Australia, *Submission 146*.

77 Dr Diane Kraal, *Committee Hansard*, 3 July 2017, p. 37.

5.105 It also magnifies the impact of the uplift factors:

> Why the change in the industry is very important is oil projects are not as capital intensive. They have much faster turnaround periods, so they become cash positive a lot quicker. The uplift rates are not as significant in determining how much and when PRRT is paid. When you move into the world of gas, it is much more capital intensive. The size of the investment is much larger. These projects can go over a decade. It can take a long time before a project becomes cash positive and would start to pay PRRT…Over that long period, the size of the uplift rate, the size that the deductions are being augmented each year can compound and can have a significant impact on how much PRRT is going to be paid.[78]

Excise and royalties

5.106 The Callaghan Report examined excise and royalties, although, as a witness to this inquiry remarked, there had been less attention to that part of the report.[79] This is despite total excise and royalty payments generally being higher than PRRT payments.[80] Crude oil excise revenue is no longer separately reported in the Commonwealth Budget papers. The royalty payments largely go to the states.

5.107 Crude oil excise is levied by the Commonwealth on condensate from onshore projects. It may be in addition to state royalties on the same project. It is not applied to gas (although royalties may be). The amount of excise varies depending on when the oil was discovered. Generally, there is a threshold quantity of oil which may be extracted before excise is payable.

5.108 Several submissions suggested that a Commonwealth royalty would be a useful addition to the Commonwealth taxing regime because of the certainty that it will be collected. It could then be deducted from PRRT if any became otherwise payable.[81] Dr Diane Kraal proposes that royalties be applied specifically to natural gas-to-liquids projects as a partial solution to the problem that the tax was designed for oil rather than gas.[82]

5.109 Mr Jason Ward, spokesperson for the Tax Justice Network Australia, noted that:

> Most of the companies involved in the new offshore LNG projects are already paying a 10 per cent royalty. In fact, Chevron's submission may unwittingly make the most compelling argument for extending a 10 per cent royalty to new offshore LNG projects. Chevron's submission shows that the

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78 Mr Michael Callaghan, *Committee Hansard,* 3 July 2017, p. 3.

79 Mr Jeremy Hirschhorn, Deputy Commissioner, Public Groups and International, ATO, *Committee Hansard*, 3 July 2017, p. 49.

80 APPEA, *Submission 137*, Chart 1.

81 GetUp! *Submission 134*, Attachment 2 *Investigation into the Petroleum Resource Rent Tax and Debt Loading in Australia —2012 to 2016*, by R McClure, R Lanis and B Govendir; Tax Justice Network Australia, *Submission 136*, p. 12.

82 Dr Diane Kraal, *Submission 129*, Attachment 2, p. 37.

> royalty and excise payments from its one-sixth interest in the North West Shelf have produced more than 5½ times as much revenue as it has paid in corporate income tax over the last seven years.[83]

5.110 Dr Craig Emerson argued that imposing a royalty would create sovereign risk, and also be a disincentive to future investment:

> …the application of a royalty effectively reduces the price that the investor gets for continuing to extract the gas then that means they are not maximising the resource rent, and the whole genesis of the resource rent was in response to these distorting taxes that lead to disincentives for exploration and development and the full recovery of the resource.[84]

Administration of the taxation of oil and gas

The PRRT

5.111 The PRRT relies on companies involved to keep their own records and make their own assessment of tax liability. Some submitters and witnesses suggested that the self-assessment of the tax left it open to abuse. For example, Mr Ward contended that:

> The opportunities for transfer pricing in this situation are phenomenal. This system, the PRRT system, is based on self-reporting and voluntary compliance—so, I am determining what the price is at this point before I run the gas through my manufacturing process. If I am a company and looking to reduce my tax liability, I am going to say that this is a worthless product that I took out of the ground and that all of the value is created in my manufacturing process.[85]

5.112 Mr Ward even suggested that it made compliance 'voluntary':

> There is a complete lack of transparency in the whole PRRT system. It is self-reporting and voluntary compliance.[86]

5.113 However, a spokesperson for the ATO pointed out that self-assessment is a normal part of the tax system:

> Under the self-assessment regime, which now applies to all income tax returns from everybody in this room in their individual capacity, all the way to the largest taxpayers and indeed to the PRRT, the base of the self-assessment regime is that people will take due care in preparing their returns and lodge returns. If they are uncertain, they have access to a ruling system, to ask for rulings before they lodge. Equally, with the benefit of not having the ATO do a full assessment on your return before you lodge it, the

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83 Mr Jason Ward, Spokesperson, Tax Justice Network Australia, *Committee Hansard*, 28 April 2017, p. 2.

84 The Hon. Dr Craig Emerson, *Committee Hansard*, 4 July 2017, p. 3.

85 Mr Jason Ward, Spokesperson, Tax Justice Network Australia, *Committee Hansard*, 28 April 2017, p. 3.

86 Mr Jason Ward, Spokesperson, Tax Justice Network Australia, *Committee Hansard*, 28 April 2017, p. 6.

> ATO has the ability to review the return after lodgement, and if you have made incorrect statements to levy appropriate penalties as well as late-payment interest.[87]

5.114 It is worth noting that an Australian National Audit Office reported on the conduct of the ATO's external compliance assurance process pilot. It concluded that the process for large business taxpayers:

> …was conducted effectively and demonstrated the potential for better client experiences, cost reductions and increased efficiency, by satisfactorily verifying factual matters in company tax returns.[88]

5.115 There was also a good practical effect of self-assessment in that the amount of tax was owing from when a return was lodged, rather than from the date of the ATO's assessment. In any event, because there are so few firms involved, the ATO has a close relationship with them which is effectively the same as assessment:

> [There are] so few taxpayers that it is possible for us to have a very detailed, one-on-one relationship with each of the significant participants in the industry. So we do not struggle in obtaining information.[89]

5.116 Industry representatives similarly spoke of a close relationship with the ATO:

> The relationship we have with the tax office is real time and it requires us to raise issues of technical or administrative uncertainty. We address them at the time. The tax office is fully aware then of our tax profile and our tax affairs, and that negates the need for audits of prior transactions because we have dealt with them in real time.[90]

5.117 One observer noted that the fact that most projects were owned and run by joint ventures increased the level of transparency:

> …it is perhaps easier for the ATO to be confident that it is being administered kind of correctly, just because the degree of suspicion amongst the joint venture operators is enough to ensure that the information is there for the project operator and, therefore, for the ATO.[91]

5.118 The change in the industry from oil to gas has had an impact on administration. For oil projects, the period from the beginning of exploration to liability for PRRT is relatively short. For gas projects, it can be 10 years between the

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87 Mr Jeremy Hirschhorn, Deputy Commissioner, Public Groups and International, ATO, *Committee Hansard*, 28 April 2017, p. 50.

88 Australian National Audit Office, *Submission 140*.

89 Mr Mark Konza, Deputy Commissioner, International, ATO, *Committee Hansard*, 3 July 2017, p. 50, p. 48.

90 Miss Anthea McKinnell, Acting Chief Financial Officer, Woodside Energy Ltd, *Committee Hansard*, 28 April 2017, p. 36.

91 Mr Geoff Francis, Head of Secretariat, Petroleum Resource Rent Tax Review, Department of the Treasury, *Committee Hansard*, 3 July 2017, p. 12.

incurring of expenses and the need to report them. This can create problems in the accuracy of reporting and the possibility of auditing.[92]

5.119 Publish What You Pay Australia observed that it was hard to find out just how much tax was being paid, and that the public was entitled to better information in order to be able to assess the system of taxation. It further argued that any rules about transparency should be aligned with the European Union and Canada, so that comparisons can easily be made.[93]

North West Shelf Royalty

5.120 The Australian National Audit Office (ANAO) was highly critical of the Department of Industry Innovation and Science's role in the administration of the North West Shelf Royalty regime. DIIS is responsible for collecting the royalty, which is then shared with Western Australia, with the Commonwealth retaining about a third of the revenue.

5.121 The ANAO found that there was no formal agreement as to the respective responsibilities of DIIS and the Western Australian Government. There was no comprehensive procedure manual. There were shortcoming in calculating the royalties, and the meters that were relied on had not been properly tested. Deductions had been allowed without proper checking, and some deductions that were claimed were not in fact allowable.[94]

Prospects for change

5.122 Greenpeace Australia Pacific distinguishes between changes in taxation of companies already in the system (which it does not object to) and measures which it argues subsidise the discovery and exploitation of further fossil fuel reserves:

> Aspects of the PRRT, including the uplift rates for exploration, constitute a clear subsidy. Australia (along with all other G20 countries) has committed to ending fossil fuel subsidies.[95]

5.123 The Callaghan Review proposed a number of changes to the PRRT regime. The proposed changes were divided into two groups: those that would alter the design of the tax, and procedural rules. The former group includes changing the uplift rates, the order of deductions, the rules for transferability, and the gas transfer arrangements. The latter group is concerned with such issues as rules for combining projects and lodging single returns, and when companies should start lodging annual returns.

5.124 Essentially, the first group of recommendations would make the biggest difference to the tax liability of companies. The Callaghan Report proposed that these

92 Callaghan Report, p. 100.

93 Publish What You Pay Australia, *Submission 149*, p. 2.

94 Australian National Audit Office, *Collection of North West Shelf Royalty Revenue*, ANAO Report No. 28 2016–17.

95 Greenpeace Australia Pacific, *Submission 132*, p. 1.

should apply only to future projects, while the second group could apply to all projects. Mr Callaghan told the committee:

> …with the fiscal risk of these things investors need to have confidence in the way the government is setting the tax regime—it is well designed, it is coherent and it is set on a coherent, comprehensive basis. One of the concerns of fiscal tweaks is that once a government starts to tweak things, they are trying to tweak things to get more money and an investor will ask when it is going to stop—there are going to be more tweaks…[A]rbitrary tweaks…can really influence an investor's confidence in a country.[96]

5.125 Dr Craig Emerson similarly argued that the uplift rates were perhaps too high but could not be changed for existing projects.

> …[The uplift rate] was very much a reflection of the perceived riskiness of petroleum exploration in Australia. I think it would be damaging to investor confidence to just put a line through that for pre-existing investments. But for investments in the future it may warrant a reconsideration, and perhaps reducing that to the bond rate, plus 5 per cent.[97]

5.126 There has been a huge flow of investment funds into Australian oil and gas on the basis of the existing tax regime. It is often argued that that regime cannot be changed for existing players. To do so would be to breach trust, and to increase the level of sovereign risk which Australia is perceived to present. Dr Malcom Roberts, Chief Executive of the Australian Petroleum Production and Exploration Association, argued:

> To date, we have compensated for high costs with low sovereign risk. Retrospective changes to our tax regime means high sovereign risk. We cannot hope to attract investment and jobs as a high-cost, high-risk country.[98]

5.127 BP Developments Australia pointed out that:

> Investments in this 'wave' [of investment in 2006–2017] were supported based on, amongst other things, Australia's stable fiscal terms and the understanding these would essentially apply over the life of the projects. The prospect of any material change would therefore cause alarm given the scale of recent investment.[99]

5.128 More specifically, examples of the results of tax changes in similar jurisdictions were recounted:

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96 Mr Michael Callaghan, *Committee Hansard*, 3 July 2017, p. 8.

97 The Hon. Dr Craig Emerson, *Committee Hansard*, 4 July 2017, p. 2.

98 Dr Malcolm Roberts, *Committee Hansard*, 28 April 2017, p. 11.

99 BP Developments Australia Pty Ltd, *Submission 142*, p. 1.

> There is research linking the decline in economic activity and the loss of investor confidence in both Alaska and Alberta to adverse changes in taxes specific to the oil and gas industry.[100]

5.129 However, Mr Ward was sceptical of these arguments:

> While some companies have suggested that changes to the tax regime will deter future investment, this is a scare tactic to preserve the status quo, which is overly generous to the industry and short-changing Australians...Even with the extension of a 10 per cent royalty to new offshore gas, Australia will continue to have one of the most generous fiscal regimes in the world for the oil and gas industry. The extension of a royalty to these five offshore LNG projects does not fundamentally change the economic returns on these projects over their long life spans.[101]

5.130 Dr Diane Kraal gave a historical example:

> Put it this way: go back to the Whitlam government, which introduced excise. Oil prices were at record levels and the Australian government needed to get a share of those super profits. The Fraser government came in and carried on the excise—not only that, but increased it—and the companies kept coming. The oil kept being extracted. Bass Strait has been very successful, as have other oil projects…both governments wanted a decent return for the Australian community. You could say that is the sovereign risk situation, but investment continued.[102]

5.131 Clearly, there will always be an interaction between the competitiveness and the stability of the tax system:

> …it is important to distinguish between having a competitive tax regime versus other jurisdictions which have similar resources, as well as sovereign risk, which is often used to describe the effect on future investment if past rules are changed—the view being that it would affect future investment at a general level of uncertainty in the country. I would say that I rarely hear the phrase 'sovereign windfall' when laws change the other way…[103]

5.132 Not surprisingly, views on how real and how important is the risk involved in changing policy depend on the interests of those holding them.

Committee view

5.133 The committee notes the importance of the oil and gas industry and the goals of taxing resources: to give the community a fair return on the resources which belong to them, and to encourage—or not discourage—investment in extracting them.

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100 Woodside Energy Ltd., *Submission 130*, Attachment (Woodside's submission to the Callaghan Review), p. 11.

101 Mr Jason Ward, *Committee Hansard*, 28 April 2017, p. 2–3.

102 Dr Diane Kraal, *Committee Hansard*, 3 July 2017, p. 28.

103 Mr Jeremy Hirschhorn, Deputy Commissioner, Public Groups and International, ATO, *Committee Hansard*, 3 July 2017, p. 48.

5.134 The committee further notes the broad range of work recently done in this area, and particularly the Treasury's Review of the Petroleum Resource Rent Tax, the submissions to it and the Treasury's subsequent consultation paper.

5.135 The committee stresses that it is important that the government deliver on its commitment to an equitable return on petroleum resources, and notes the long time that has elapsed since the announcement of the Callaghan Review. As such, the committee is particularly disappointed that the 2018–19 Budget did not contain any measures relating to the PRRT, as the government has had the findings of the Callaghan Review for over 12 months and the subsequent Treasury consultation process was due for completion by the end of September 2017.

5.136 The committee believes that there is a broad consensus among non-industry players that the arrangements surrounding the PRRT are too generous. It notes the possibility that compounding of deductions can completely offset potential revenue.

5.137 The committee endorses the direction of the Callaghan Review's recommendations. In particular, it concludes that:

- uplift rates should be lowered
- the ordering of deductions should be rationalised and
- the residual pricing method should be scrutinised.

5.138 The committee agrees with the conclusions of the Callaghan Review, that changes are necessary but that, in order to maintain certainty for the sector, they should apply only to future projects.

5.139 The committee notes that the ATO already maintains close contact with companies in the PRRT system. It believes that consideration should be given to establishing a specific body, possibly within the ATO, to monitor administration of the PRRT, and to ensure that the self-assessment processes work appropriately. Whatever arrangements are in place, it is essential that they be adequately resourced.

5.140 The committee notes the arguments for a royalty on all projects. It sees a good deal of merit in them, but believes that a properly functioning PRRT, in conjunction with the base erosion and profit-shifting measures discussed elsewhere in this report, would meet the objectives of ensuring the oil and gas companies appropriately contribute to government revenue.

Recommendation 10

5.141 The committee recommends that the government finalise and release its response to the Callaghan report into the Review of the Petroleum Resource Rent Tax.

Recommendation 11

5.142 The committee recommends that the government overhaul uplift rates for future Petroleum Resource Rent Tax eligible projects, so as to make them less generous.

Recommendation 12

5.143 The committee recommends that the ordering of deductions be rationalised for future Petroleum Resource Rent Tax eligible projects so that those with the highest compounding rates are used first for tax deduction purposes.

Recommendation 13

5.144 The committee recommends that the gas transfer pricing method for Petroleum Resource Rent Tax eligible projects be reformed to make it simpler and more transparent so as to ensure that it delivers a fair return to the community.

Senator Chris Ketter
Chair

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

Dissenting Comments from the Australian Greens

1.1 The Australian Greens do not believe the Chair's Report offers a suite of recommendations that is commensurate with the size of the tax avoidance epidemic or that is sufficiently comprehensive to deter tax avoidance strategies. This is particularly the case in relation to the oil and gas industry.

1.2 The public have made it clear that they want a tax system, not a tax avoidance system. We acknowledge that there have been considerable legislative developments since this inquiry began in October 2014; and that there is now a greater willingness across party lines to do more to protect public revenues. In large part these developments can be attributed to the work of the committee and the witnesses who have supported its investigations.

1.3 While much work needs to be done to harmonise global tax laws, there are significant steps that can and should be taken domestically to protect our tax base and to raise the revenue required to provide the high quality public services and infrastructure that people want and deserve.

ATO staff and outsourcing to the big-four accounting firms

1.4 Over the period that this inquiry has been conducted, staffing levels at the ATO have been massively reduced. The Labor government implemented a plan to make 4,700 ATO staff redundant between 2014 and 2018. The incoming Abbott and Turnbull governments all but delivered on this plan, with the total reduction of ATO staff between 2013 and 2017 totalling 4 441.[1]

1.5 At the same time that these mass-scale public sector redundancies have occurred, public money going to the big-four accounting firms for consulting services has grown to $1.7 billion over the past five years.[2] Ernst & Young, PwC, KPMG and Deloitte cannot substitute the ATO's role in pursuing tax avoidance strategies, particularly given that they are also the authors and facilitators of tax avoidance strategies around the world.

1.6 Not only does the largesse from these government contracts need to end, and the savings used to reinstate ATO staff, but to prevent future conflicts of interest, political parties must cease accepting the donations from the four-big accounting firms who reap millions more in contracts than they provide in political donations.

Tax transparency

1.7 In relation to disclosure, the annual company tax disclosures have been an invaluable tool for the public to see which companies are not paying tax, sometimes on very high revenues. We support the recommendation to lower the threshold so as to

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1 https://www.themandarin.com.au/91132-fallout-from-4-corners-ato-under-review-from-both-sides-of-parliament/

2 http://www.afr.com/business/accounting/revealed-deloitte-ey-kpmg-and-pwc-earned-17b-from-government-work-20180326-h0xymn

include all companies with a turnover greater than $100m, but argue that this should go further.

1.8 The disclosure requirements for companies be back-dated so as to include the last two financial years. The thresholds for disclosure should be further reduced to $50 million for future disclosure years. And, so as to avoid any doubt, the grandfathering arrangements that exclude some private companies from disclosure requirements should be lifted.

1.9 To support further transparency which has proven to be effective, the recommendation to review ASIC's fees and charges should also be strengthened specifically in relation to access to company reports.

1.10 Making these important documents available free of charge for not-for-profit actors would advance public interest research. The loss of public revenue would, in all likelihood, be recovered from an increase in revenue receipts that would result from greater transparency.

1.11 A final improvement on the Chair's report to strengthen transparency would be to recommend the establishment of a public register of settlements to name the company for each settlement they have made with the ATO, listing the amounts that the ATO originally assessed a company's tax liability and the amount the matter was finally settled for. This would dissuade companies from under-claiming their tax liabilities. It would also give the ATO more bargaining power in negotiations to avoid litigation and also place public pressure on the ATO not to give too much ground on tax settlements.

Petroleum Resource Rent Tax (PRRT)

1.12 The area that the Chair's report most fails in its responsibility to stop the leakage of tax revenues to global companies is in relation to the Petroleum Resource Rent Tax (PRRT). This is the primary reason that the Australian Greens have written a Dissenting Report.

1.13 The proposal to simply change the uplift rate for future investment will mean gigajoules of gas will be extracted completely free by multinational gas giants while billions of dollars in revenue will be lost from existing projects.

1.14 The latest tax statistics show that $188 billion of tax credits can be collectively carried forward by these companies for the coming tax years. Any unspent tax credits will appreciate in value at a rate of 15% over the long-term bond rate for exploration expenditure, and 5% over the long term bond rate for general expenditure on gas projects.

1.15 Over the past seven financial years these tax credits have grown from $9 billion in 2010-11 to $279 billion in 2016-17.[3] That's a staggering 30-fold increase.

3 https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Taxation-statistics/Taxation-statistics-2015-16/?page=11#GST_and_other_taxes_detailed_tables

PRRT tax credits

Year	Carry Forward $	Annual Growth Rate %
2010-11	9,362,096,688	
2011-12	18,376,481,627	0.49
2012-13	127,987,076,389	0.86
2013-14	159,739,871,521	0.20
2014-15	187,505,986,947	0.15
2015-16	237,866,775,211	0.21
2016-17	278,822,437,879	0.15

1.16 This current tax regime for gas means these tax credits grow at a rate higher than all other financial return benchmarks. The year-on-year growth of these carry forward credits has averaged a 34 percent. Tax credits for gas companies are growing at a rate higher than Sydney's extravagant property market.

1.17 The current regime is completely unsustainable. It is giving away Australia's finite resources for free, encouraging often very marginal fossil fuel extraction, and leaving us unable to invest in proper public services.

1.18 The recommendations in the Chair's report propose to leave this system untouched. Labor's position in this report matches the government's stated position to let these multinational gas giants continue to extract our resources for free for decades to come.

1.19 In the absence of retrospectively changing the uplift rate or instituting a scheme that will force companies to use these tax credits at a rapid rate, a royalty system should sit alongside the existing PRRT tax regime to ensure that at least some revenue is collected by the Australian Government.

1.20 However, a flat 10 per cent royalty rate of the wellhead value on all offshore oil and gas projects has been costed by the Parliamentary Budget Office (PBO), using a system where the royalty rate would be allowed to be expensed against PRRT liabilities. This would ensure around $1.4 billion could be collected each year from multinational gas companies.

1.21 The Australian Greens have submitted a number of costings to the PBO based on a reformed method of calculating the price of liquefied natural gas (LNG) and dramatically reduced tax credits. However, given the opaque nature of the LNG market and the small number of companies operating in this market, the PBO has not been able to provide costings of the proposed methods.

Recommendation 1

1.22 End the largesse of government contracts to the big four consulting firms and reinvest that money to rehire permanent ATO staff.

Recommendation 2

1.23 All companies with a total income equal to or exceeding $50 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.

Recommendation 3

1.24 Fees and charges to access company reports and financial records held by ASIC should be made available for free for not-for-profit actors such as charities, academics, freelance journalists and Members of Parliament.

Recommendation 4

1.25 An ATO settlement register should publicly name the company for each settlement, list the amounts that the ATO originally assessed a company's tax liability and the amount the matter was finally settled for.

Recommendation 5

1.26 To ensure revenue is collected in this decade for Australia's finite gas resources, a flat 10 per cent royalty rate of the wellhead value on all offshore oil and gas projects should be implemented, where that royalty rate would be allowed to offset PRRT liabilities.

Senator Peter Whish-Wilson

Senator for Tasmania

Appendix 1

Summary of Base Erosion and Profit Shifting package

1.1 This appendix provides a brief overview of the Base Erosion and Profit Shifting (BEPS) package by action item and the Australian Government's response following the release of the final reports.

Action 1: Address the Tax Challenges of the Digital Economy

1.2 The digital economy and its business models present some key features which are potentially relevant from a tax perspective—mobility, reliance on data, network effects, the spread of multi-sided business models, a tendency toward monopoly or oligopoly, and volatility. The digital economy has also accelerated and changed the spread of global value chains in which multinational enterprises integrate their worldwide operations.[1]

1.3 BEPS risks are exacerbated in the digital economy and many of the broader BEPS measures will apply to the digital economy. Measures have been developed to level the playing field between domestic and foreign suppliers in relation to the collection of Goods and Services Tax (GST) in the country where the consumer is located.

1.4 Additional work has been done in relation to broader tax challenges of the digital economy, such as nexus and data, but this analysis and the potential solutions go beyond BEPS issues. As such, OECD and G20 countries have agreed to monitor developments and consider whether existing international tax standards are able to deal with tax challenges raised by developments in the digital economy.

1.5 In response, the Australian Government noted its intention to introduce an integrity measure to apply the GST to digital products and services imported by Australian consumers.[2] This measure was passed into legislation on 4 May 2016 as part of the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016*. Other measures, particularly the multinational anti-avoidance law and diverted profits tax, have also changed the behaviour of some multinational companies in the digital economy which have created a taxable presence in Australia.

Action 2: Neutralise the Effects of Hybrid Mismatch Arrangements

1.6 Hybrid mismatch arrangements exploit differences in the tax treatment of an entity or instrument between tax jurisdictions to achieve double non-taxation, including long-term deferral. The adoption of a common approach to hybrid mismatches will facilitate the convergence of national practices through domestic and treaty rules to neutralise such arrangements. This approach will prevent double non-

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1 OECD, *2015 Final Reports: Executive Summaries*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 5.

2 The Hon. S. Morrison MP (Treasurer), *OECD report supports Australian Government action on multinational tax avoidance*, Media Release 3-2015, 6 October 2015, p. 5.

taxation by eliminating the tax benefits of mismatches but not adversely impact the use of these instruments in cross-border trade and investment.

1.7 Essentially, the final report recommends that hybrid mismatch arrangements be neutralised as follows:

- Where there is a deduction/no inclusion outcome, deny the payer the deduction (primary response) or require the inclusion of the income (secondary response).
- Where there is a double deduction outcome, deny the deduction in the parent jurisdiction.

1.8 The Australian Government tasked the Board of Taxation to examine and consult on how best to implement the new anti-hybrid rules in the Australian legal context and report back by the end of March 2016.[3] Following this consultation process, the government committed to implementing this action in the 2016-17 Budget and is also developing specific rules to eliminate hybrid mismatches that occur in relation to regulatory capital known as Additional Tier 1 (AT1). Development of the enabling legislation to implement these hybrid mismatch rules is ongoing.[4]

Action 3: Designing Effective Controlled Foreign Company Rules

1.9 Controlled Foreign Company (CFC) rules address the risk that taxpayers with a controlling interest in a foreign subsidiary can shift income into a CFC. Without such rules, CFCs provide opportunities for profit shifting and long-term deferral of taxation. The final report sets out recommendations in the form of six building blocks for the design of effective CFC rules covering:

- definition of a CFC;
- CFC exemptions and threshold requirements;
- definition of income;
- computation of income;
- attribution of income; and
- prevention and elimination of double taxation.[5]

1.10 As Australia already has strong CFC rules and these meet the OECD best practice guidance, the government considers that no action is necessary at this stage.[6]

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3 The Hon. J. Hockey MP (Treasurer), 'Consultation on tax integrity proposals', Letter to the Board of Taxation, 12 May 2015, http://taxboard.gov.au/files/2015/10/Letter_from_tsr_anti-hybrid.pdf (accessed 14 January 2016).

4 Australian Taxation Office, *Implementation of the OECD hybrid mismatch rules*, https://www.ato.gov.au/General/New-legislation/In-detail/Other-topics/International/Implementation-of-the-OECD-hybrid-mismatch-rules/ (accessed 30 October 2017).

5 OECD, *Explanatory Statements*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, pp. 14-15.

Action 4: Limiting Base Erosion via Interest Deductions and Other Financial Payments

1.11 Multinational groups may achieve favourable tax outcomes by adjusting the amount of debt in a group entity. Groups may multiply the level of debt at the level of individual group entities via intra-group financing or use financial instruments to make payments that are economically equivalent to interest but have a different legal form (and may not be captured by restrictions on interest deductibility).[7] This is potentially a significant issue for Australia which has a relatively high corporate income tax rate.

1.12 The final report recommends a fixed ratio rule which limits an entity's net deductions for interest (and payments economically equivalent to interest) to a percentage of its earnings before interest, taxes, depreciation and amortisation (EBITDA). The approach can be supplemented by a worldwide group ratio rule which allows the entity to exceed this limit in certain circumstances.[8]

1.13 Australia has had thin capitalisation laws since 2001 but amended them in October 2014 to prevent further erosion of the Australian tax base. Australia does not have a fixed ratio rule but instead employs a safe harbour debt limit of 1.5:1 on a debt-to-equity basis. This amendment also introduced a worldwide gearing debt limit to provide flexibility for inward investing entities.[9]

Action 5: Counter Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance

1.14 As part of the BEPS Project, the Forum on Harmful Tax Practices was tasked with revamping its work on harmful tax practices to prioritise improving transparency, including the spontaneous exchange of rulings related to preferential regimes and on requiring substantial activity for any preferential regime.[10] The final report sets out a minimum standard to assess whether there is substantial activity in a preferential regime. In the area of transparency, a framework has been agreed for mandatory spontaneous exchange of information on rulings.[11]

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6 The Hon. S. Morrison (Treasurer), *OECD report supports Australian Government action on multinational tax avoidance*, Media Release 3-2015, 6 October 2015, p. 5.

7 OECD, *2015 Final Reports: Executive Summaries*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 15.

8 OECD, *2015 Final Reports: Executive Summaries*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 15.

9 *Explanatory Memorandum*, Tax and Superannuation Laws Amendment (2014 Measures No. 4) Bill 2014, p. 9.

10 OECD, *2015 Final Reports: Executive Summaries*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 19.

11 OECD, *Explanatory Statements*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 14.

1.15 The Australian Government indicated that the Australian Taxation Office has already implemented exchange of rulings.[12]

Action 6: Preventing Treaty Abuse

1.16 Taxpayers engaged in treaty shopping and other treaty abuse strategies undermine tax sovereignty by claiming treaty benefits in situations where these benefits were not intended to be granted, thereby depriving countries of tax revenues.[13] The final report includes a minimum standard on preventing abuse including through treaty shopping and new rules that provide safeguards to prevent treaty abuse and offer a certain degree of flexibility regarding how to do so.[14]

1.17 In its response, the Australian Government indicated that the new treaty anti-abuse rules would be incorporated into the negotiation of new and updated treaties.[15]

Action 7: Prevent the Artificial Avoidance of Permanent Establishment Status

1.18 Tax treaties generally provide that the business profits of a foreign enterprise are taxable in a jurisdiction only to the extent that the enterprise has in that jurisdiction a permanent establishment to which profits are attributable. The final report includes changes to the definition of permanent establishment to address techniques used to avoid tax obligations.[16]

1.19 The Australian Government has introduced the Multinational Anti-Avoidance Law as part of the *Tax Laws Amendment (Combating Multinational Tax Avoidance) Law 2015* to address issues relating to the avoidance of permanent establishment in Australia and considers this legislative measure is consistent with the BEPS action. In addition, other recommendations in the BEPS final report relating to this action are in line with Australia's treaty practice.[17]

Actions 8, 9 and 10: Assure that Transfer Pricing Outcomes are in Line with Value Creation

1.20 Transfer pricing rules are used to determine the conditions, including the price, for transactions within a multinational group. The existing standards have been clarified and strengthened, including the guidance on the arm's length principle and an

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12 The Hon. S. Morrison MP (Treasurer), *OECD report supports Australian Government action on multinational tax avoidance*, Media Release 3-2015, 6 October 2015, p. 6.

13 OECD, *2015 Final Reports: Executive Summaries*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 19.

14 OECD, *Explanatory Statements*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 14.

15 The Hon. S. Morrison MP (Treasurer), *OECD report supports Australian Government action on multinational tax avoidance*, Media Release 3-2015, 6 October 2015, p. 6.

16 OECD, *Explanatory Statements*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 15.

17 The Hon. S. Morrison MP (Treasurer), *OECD report supports Australian Government action on multinational tax avoidance*, Media Release 3-2015, 6 October 2015, p. 6.

approach to ensure the appropriate pricing of hard-to-value intangibles within the arm's length principle. The final report also contains revised guidance on contractual allocations of risk and other high-risk BEPS concerns so that transfer pricing rules secure outcomes that better align operational profits with the economic activities which generate them.[18]

1.21 The Australian Government does not consider that a fundamental change is required to Australia's transfer pricing rules. [19] However, legislation to amend and update transfer pricing rules to be consistent with the 2015 OECD BEPS Report was included in the *Treasury Laws Amendment (Combating Multinational Tax Avoidance) Law 2017*.[20]

Action 11: Measuring and Monitoring BEPS

1.22 Given the complexity of BEPS and existing data limitations, economic analyses of the scale and economic impact of BEPS are currently constrained and improved data and methodologies are required to fill this gap in knowledge. The final report recommends taking better advantage of available tax data and improving analyses to support the monitoring of BEPS in the future, including tools to assist individual countries evaluate the fiscal effects of BEPS and the impact of BEPS countermeasures.[21]

1.23 The Australian Government response indicates that further work on methodologies to measure progress is required.[22]

Action 12: Require Taxpayers to Disclose their Aggressive Tax Planning Arrangements

1.24 The lack of timely, comprehensive and relevant information on aggressive tax planning strategies is one of the main challenges faced by tax authorities worldwide. Early access to such information provides the opportunity to quickly respond to tax risks through informed risk assessment, audits, or changes to legislation. The final report provides a modular framework which will allow countries to design a regime that fits with the need to obtain early information on aggressive or abusive tax planning schemes and their users. It sets out best practice recommendations for rules

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18 OECD, *Explanatory Statements*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 15.

19 The Hon. S. Morrison MP (Treasurer), *OECD report supports Australian Government action on multinational tax avoidance*, Media Release 3-2015, 6 October 2015, p. 6.

20 Schedule 3, *Treasury Laws Amendment (Combating Multinational Tax Avoidance) Law 2017*.

21 OECD, *Explanatory Statements*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 16.

22 The Hon. S. Morrison MP (Treasurer), *OECD report supports Australian Government action on multinational tax avoidance*, Media Release 3-2015, 6 October 2015, p. 6.

targeting international tax schemes, and for the development and implementation of more effective information exchange and cooperation between tax administrations.[23]

1.25 The Australian Government, through the Australian Taxation Office, is considering the costs and benefits for Australia of adopting disclosure rules.[24]

Action 13: Re-examine Transfer Pricing Documentation

1.26 Improved and better-coordinated transfer pricing documentation will increase the quality of information provided to tax administrations and limit the compliance burden on businesses. The final report recommends a minimum standard on Country-by-Country reporting reflecting a commitment to implement the common template in a consistent manner. Country-by-Country reports should be filed in the ultimate parent entity's jurisdiction and shared automatically through government-to-government exchange of information. Country-by-Country reports will enable tax administrators to better assess transfer pricing risks and target their resources while multinationals will also see benefits from a more limited compliance burden.[25]

1.27 In December 2015, the Australian Government adopted Country-by-Country reporting as part of the *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015*. The Country-by-Country reporting regime applies in relation to income years starting on or after 1 January 2016.[26]

Action 14: Make Dispute Resolution Mechanisms More Effective

1.28 The changes introduced by implementing the recommendations arising from the BEPS Project may lead to some uncertainty, and could, without action, increase double taxation and disputes between countries in the short term. Improving dispute resolution mechanisms is therefore an integral component of the work on BEPS issues.[27]

1.29 The mutual agreement procedure (MAP) is the mechanism set out by the OECD Model Tax Convention through which differences and difficulties regarding the interpretation or application of the convention can be resolved on a mutually-agreed basis. Countries have committed to a minimum standard with respect to the resolution of treaty-related disputes.[28]

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23 OECD, *Explanatory Statements*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 16.

24 The Hon. S. Morrison MP (Treasurer), *OECD report supports Australian Government action on multinational tax avoidance*, Media Release 3-2015, 6 October 2015, p. 6.

25 OECD, *Explanatory Statements*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 17.

26 *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015*, Schedule 4.

27 OECD, *Explanatory Statements*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 17.

28 OECD, *2015 Final Reports: Executive Summaries*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 41.

1.30 Australia is one of twenty countries to have declared their commitment to provide for mandatory binding MAP arbitration in their bilateral treaties as a mechanism to guarantee that treaty-related disputes will be resolved within a specified timeframe.[29]

Action 15: Develop a Multilateral Instrument

1.31 Tax treaties are based on a set of common principles designed to eliminate double taxation that may occur in the case of cross-border trade and investments. Governments have agreed to explore the feasibility of am multilateral instrument that would have the same effects as a simultaneous negotiation of thousands of bilateral tax treaties. The goal is to streamline the implementation of the tax treaty-related BEPS measures and to have the multilateral instrument open for signature by 31 December 2016.[30]

1.32 Australia, along with 86 other countries, is working to update bilateral treaties with BEPS outcomes.[31] On 7 June 2017, Australia, along with 67 other jurisdictions, signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. Australia confirmed its positions on a provisional basis, to be confirmed on ratification of the Convention. Legislation will be introduced into the Australian Parliament as soon as practicable to give the Convention the force of law in Australia.[32]

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29 OECD, *2015 Final Reports: Executive Summaries*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, p. 42.

30 OECD, *2015 Final Reports: Executive Summaries*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, pp. 43-44.

31 The Hon. S. Morrison MP (Treasurer), *OECD report supports Australian Government action on multinational tax avoidance*, Media Release 3-2015, 6 October 2015, p. 7.

32 The Hon. K. O'Dwyer MP (Minister for Revenue and Financial Services), Australia signs new multilateral convention to prevent tax avoidance, *Media Release*, 8 June 2017, http://kmo.ministers.treasury.gov.au/media-release/045-2017/ (accessed 30 October 2017).

Appendix 2
Submissions and additional documents

Submissions

Received in the 44th Parliament

1 Mr Eric Bruner
2 Mr Mark Lyons
3 Taxpayers Australia Limited
4 Aurizon
5 Queensland Nurses' Union
6 Toll Group
7 BWP Trust
8 Fortescue Metals Group Limited
9 Mr David Myer
10 ANZ
11 Stockland
12 Mr Berrick Boyd
13 Ms Eileen Ross
14 Community and Public Sector Union
15 Deloitte Touche Tohmatsu
16 Mirvac
17 Origin Energy Limited
18 Property Council of Australia
19 Ms Betty Lee McGeever
20 Mr Alan McGrath
21 Mr Alan Wilson
22 Associate Professor Antony Ting
23 Mr Ian Gillard
24 Emeritus Professor Marcus Wigan
25 Scentre Group
26 Sydney Airport
27 OZ Minerals Limited

28	Rio Tinto
29	DEXUS Property Group
30	Publish What You Pay Australia
31	Insurance Australia Group Limited
32	Australian Securities and Investments Commission
33	The Tax Institute
34	Computershare Limited
35	Woodside Energy Ltd
36	Asciano Limited
37	ResMed Ltd
38	Echo Entertainment Group Limited
39	PricewaterhouseCoopers
40	Cromwell Property Group
41	The GPT Group
42	Institute of Public Affairs
43	Challenger Limited
44	AMP Limited
45	Spark Infrastructure
46	James Hardie Industries
47	Orica Limited
48	Australian Taxation Office
49	Mr Kendall Lovett
50	Mr Rob Cannon
51	News Corp Australia
52	Glencore
53	Ernst & Young
54	Minerals Council of Australia
55	Transurban
56	Mr Martin Lock
57	Google Australia
58	Newcrest Mining Limited
59	Corporate Tax Association
60	GetUp

61 Name Withheld

62 The Australia Institute

63 Lend Lease

64 Professor Miranda Stewart, Tax and Transfer Policy Institute, Australian National University

65 Mr Rob Wallace

66 Apple

67 ActionAid Australia

68 Brambles Ltd

69 Mr Andrew Noble

70 Macquarie Group

71 Financial Services Council

72 Lee & Associates

73 CPA Australia

74 Uniting Church in Australia, Synod of Victoria and Tasmania

75 Dr Roman Lanis and Mr Ross McClure, University of Technology, Sydney

76 Dr John Miller AO

77 Microsoft

78 United Voice

79 Tabcorp Holdings Limited

80 Name Withheld

81 BHP Billiton

82 Confidential

83 Name Withheld

84 Confidential

85 Centre for Tax Policy and Administration, OECD

86 BWP Trust

87 Business Council of Australia

88 AGL Energy Limited

89 IBM Australia & New Zealand

90 Chartered Accountants Australia and New Zealand

91 KPMG

92 Infrastructure Partnerships Australia

93 Professor Kerrie Sadiq, QUT Business School
94 Macquarie Telecom
95 Mr David Allen
96 Name Withheld
97 Mr Charles Lowe
98 Squiz
99 Mr Pranay Bhattacharya
100 Confidential
101 Accommodation Association of Australia
102 Eli Lilly Australia
103 Medicines Australia
104 MSD
105 Johnson & Johnson Pty Ltd
106 Roche Products Pty Limited
107 GSK Australia
108 Novartis Australia
109 Sanofi
110 Pfizer Australia
111 AstraZeneca Australia
112 ALDI Australia
113 Costco Wholesale Australia
114 Santos Ltd
115 BP Australia Pty Ltd
116 ExxonMobil Australia Group of Companies
117 Viva Energy Australia Ltd
118 Caltex Australia
119 Shell Australia
120 Origin Energy Limited
121 Chevron Australia
122 Airbnb
123 Uber
124 International Transport Workers' Federation (ITF)
125 Broadspectrum Limited

126 Dr Shumi Akhtar, The University of Sydney (Business School)

127 Tax Justice Network Australia

Received in the 45th Parliament

128 Mr Dave Burrows

129 Dr Diane Kraal

130 Woodside Energy Ltd.

131 Australian Small Business and Family Enterprise Ombudsman

132 Greenpeace Australia Pacific

133 BHP Billiton

134 GetUp

135 Santos Ltd

136 Tax Justice Network - Australia

137 Australian Petroleum Production & Exploration Association

138 CPSU

139 Australian Taxation Office (ATO)

140 Australian National Audit Office

141 BP Developments Australia Pty Ltd

142 Shell Australia Pty Ltd

143 North West Shelf Project

144 Chevron Australia

145 ConocoPhillips Australia

146 Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia

147 International Transport Workers Federation (Sydney Office)

148 Mr Kevin Morrison & Prof. Damien Giurco

149 Publish What You Pay Australia

150 INPEX

151 Business Council of Australia

152 WA Government

153 ExxonMobil Australia

154 Centre for Independent Studies (CIS)

155 Australian Securities and Investments Commission

156 Building and Wood Workers' International (BWI)

157 Electrical Trades Union of Australia

158 Mr Juan Carlos Boué

159 Mr Michael West

160 Tax Justice Network - Australia (TJN) and the Make Exxon Pay Coalition

161 Australian Workers' Union (AWU)

162 Professor David Peetz

163 ActionAid Australia

164 Australian Nursing and Midwifery Federation (ANMF)

165 Australian Council of Trade Unions (ACTU)

166 Jubilee Australia

167 The Australia Institute

Tabled documents

Received in the 44th Parliament

1 Document tabled by Professor Richard Vann at a public hearing held in Sydney on 8 April 2015.

2 Document tabled by Glencore at a public hearing held in Melbourne on 10 April 2015.

3 Document tabled by Rio Tinto at a public hearing held in Melbourne on 10 April 2015.

4 Document tabled by Caltex at a public hearing held in Sydney on 18 November 2015.

5 Document tabled by Chevron at a public hearing held in Sydney on 18 November 2015.

6 Document tabled by the Commissioner of Taxation at a public hearing held in Canberra on 21 April 2016.

7 Document tabled by Ms Marian Wilkinson at a public hearing held in Canberra on 21 April 2016.

8 Document tabled by Mr Ross McClure and Associate Professor Roman Lanis at a public hearing held in Canberra on 21 April 2016.

Tabled documents

Received in the 45th Parliament

9 Document tabled by Chevron at a public hearing held in Perth on 28 April 2017.

10 Document tabled by Chevron at a public hearing held in Perth on 28 April 2017.

11 Document tabled by BHP Billiton at a public hearing held in Perth on 28 April 2017.

12 Document tabled by Tax Justice Network – Australia at a public hearing held in Canberra on 3 July 2017.

13 Document tabled by Publish What You Pay Australia at a public hearing held in Melbourne on 14 March 2018.

14 Document tabled by ExxonMobil Australia at a public hearing held in Melbourne on 14 March 2018.

Answers to questions on notice

Received in the 44th Parliament

1 Answers to questions on notice from a public hearing held in Sydney on 8 April 2015, received from Professor Antony Ting on 23 April 2015.

2 Answers to questions on notice from a public hearing held in Canberra on 9 April 2015, received from KPMG on 23 April 2015.

3 Answers to questions on notice from a public hearing held in Melbourne on 10 April 2015, received from Mr Martin Lock on 23 April 2015.

4 Answers to questions on notice from a public hearing held in Sydney on 8 April 2015, received from the Property Council of Australia on 23 April 2015.

5 Answers to questions on notice from a public hearing held in Melbourne on 10 April 2015, received from PricewaterhouseCoopers on 24 April 2015.

6 Answers to questions on notice from a public hearing held in Canberra on 9 April 2015, received from EY on 24 April 2015.

7 Answers to questions on notice from a public hearing held in Sydney on 8 April 2015, received from the Australian Taxation Office on 24 April 2015.

8 Answers to questions on notice from a public hearing held in Canberra on 9 April 2015, received from the CPSU on 24 April 2015.

9 Answers to questions on notice from a public hearing held in Sydney on 8 April 2015, received from Microsoft on 24 April 2015.

10 Answers to questions on notice from a public hearing held in Melbourne on 10 April 2015, received from Deloitte on 24 April 2015.

11 Answers to questions on notice from a public hearing held in Sydney on 8 April 2015, received from Google Australia on 24 April 2015.

12 Answers to questions on notice from a public hearing held in Canberra on 9 April 2015, received from the Business Council of Australia on 24 April 2015.

13 Answers to questions on notice from a public hearing held in Melbourne on 10 April 2015, received from Glencore on 24 April 2015.

14 Answers to questions on notice from a public hearing held in Melbourne on 10 April 2015, received from BHP Billiton on 24 April 2015.

15 Answers to questions on notice from a public hearing held in Canberra on 9 April 2015, received from the Australian Securities and Investments Commission on 27 April 2015.

16 Answers to questions on notice from a public hearing held in Melbourne on 10 April 2015, received from Rio Tinto on 27 April 2015.

17 Answers to questions on notice from a public hearing held in Sydney on 8 April 2015, received from Apple Pty Limited on 28 April 2015.

18 Answers to questions on notice from a public hearing held in Sydney on 22 April 2015, received from the Australian Taxation Office on 1 May 2015.

19 Answers to additional questions on notice, received from Price Waterhouse and Coopers on 7 May 2015.

20 Answers to additional questions on notice, received from KPMG on 8 May 2015.

21 Answers to additional questions on notice, received from EY on 8 May 2015.

22 Answers to additional questions on notice, received from Google Australia on 8 May 2015.

23 Answers to additional questions on notice, received from Deloitte on 8 May 2015.

24 Answers to additional questions on notice, received from the Australian Taxation Office on 8 May 2015.

25 Answers to additional questions on notice, received from Fortescue Metals Group Limited on 8 May 2015.

26 Answers to additional questions on notice, received from Glencore on 12 May 2015.

27 Answers to additional questions on notice, received from Apple Pty Limited on 13 May 2015.

28 Answers to additional questions on notice, received from BHP Billiton on 15 May 2015.

29 Answers to additional questions on notice, received from News Corp Australia and dated 15 May 2015.

30 Answers to additional questions on notice, received from Rio Tinto on 21 May 2015.

31 Answers to additional questions on notice, received from Apple Pty Limited on 22 May 2015.

32 Answers to additional questions on notice, received from Microsoft on 22 May 2015.

33 Answers to additional questions on notice, received from Google Australia on 25 May 2015.

34 Answers to additional questions on notice, received from BHP Billiton on 25 May 2015.

35 Answers to questions on notice from a public hearing held in Sydney on 1 July 2015, received from the Australian Taxation Office on 14 July 2015.

36 Answers to questions on notice from a public hearing held in Sydney on 1 July 2015, received from AstraZeneca on 9 July 2015.

37 Answers to questions on notice from a public hearing held in Sydney on 1 July 2015, received from Johnson & Johnson on 16 July 2015.

38 Answers to questions on notice from a public hearing held in Sydney on 1 July 2015, received from Merck, Sharp & Dohme (MSD) on 16 July 2015.

39 Answers to questions on notice from a public hearing held in Sydney on 1 July 2015, received from Novartis on 16 July 2015.

40 Answers to questions on notice from a public hearing held in Sydney on 1 July 2015, received from Pfizer on 16 July 2015.

41 Answers to questions on notice from a public hearing held in Sydney on 1 July 2015, received from Roche on 16 July 2015.

42 Answers to questions on notice from a public hearing held in Sydney on 1 July 2015, received from Sanofi on 16 July 2015.

43 Answers to questions on notice from a public hearing held in Sydney on 18 November 2015, received from KPMG on 8 December 2015.

44 Answers to questions on notice from a public hearing held in Sydney on 18 November 2015, received from the ATO on 9 December 2015.

45 Answers to questions on notice from a public hearing held in Sydney on 18 November 2015, received from Deloitte on 9 December 2015.

46 Answers to questions on notice from a public hearing held in Sydney on 18 November 2015, received from PWC on 9 December 2015.

47 Answers to questions on notice from a public hearing held in Sydney on 18 November 2015, received from Chevron on 18 December 2015.

48 Answers to questions on notice from a public hearing held in Sydney on 18 November 2015, received from Uber on 19 February 2016.

49 Answers to questions on notice from a public hearing held in Canberra on 21 April 2016, received from ATO on 5 May 2016.

Answers to questions on notice

Received in the 45th Parliament

50 Answers to questions on notice from a public hearing held in Perth on 28 April 2017, received from ATO on 9 May 2017.

51 Answers to questions on notice from a public hearing held in Perth on 28 April 2017, received from the WA Government on May 2017.

52 Answers to questions on notice from a public hearing held in Perth on 28 April 2017, received from Chevron on 26 May 2017.

53 Answers to questions on notice from a public hearing held in Perth on 28 April 2017, received from BP Australia Pty Ltd on 31 May 2017.

54 Answers to questions on notice from a public hearing held in Perth on 28 April 2017, received from Woodside Energy Ltd. on 2 June 2017.

55 Answers to questions on notice from a public hearing held in Perth on 28 April 2017, received from ExxonMobil Australia on 2 June 2017.

56 Answers to questions on notice from a public hearing held in Perth on 28 April 2017, received from BHP Billiton on 2 June 2017.

57 Answers to questions on notice from a public hearing held in Perth on 28 April 2017, received from Shell Australia on 2 June 2017.

58 Answers to questions on notice from a public hearing held in Canberra on 3 July 2017, received from ATO on 19 July 2017.

59 Answers to questions on notice from a public hearing held in Canberra on 3 July 2017, received from Treasury on 19 July 2017.

60 Answers to questions on notice from a public hearing held in Sydney on 22 August 2017, received from Google Australia on 10 September 2017.

61 Answers to questions on notice from a public hearing held in Sydney on 22 August 2017, received from Microsoft on 12 September 2017.

62 Answers to questions on notice from a public hearing held in Sydney on 22 August 2017, received from Apple Pty Ltd on 12 September 2017.

63 Answers to questions on notice from a public hearing held in Sydney on 22 August 2017, received from Facebook on 15 September 2017.

64 Answers to questions on notice from a public hearing held in Melbourne on 14 March 2018, received from ExxonMobil Australia on 6 April 2018.

65 Answers to questions on notice from a public hearing held in Melbourne on 14 March 2018, received from ATO on 6 April 2018.

66 Answers to questions on notice from a public hearing held in Melbourne on 14 March 2018, received from ATO on 10 April 2018.

67 Answers to questions on notice from a public hearing held in Melbourne on 14 March 2018, received from the Treasury on 30 May 2018.

Additional information

Received in the 44th Parliament

1 Document provided by Professor Richard Vann following the public hearing held in Sydney on 8 April 2015.

2 Document provided by News Corp Australia following the public hearing held in Sydney on 8 April 2015.

3 Document provided by Deloitte Touche Tohmatsu following the public hearing held in Melbourne on 10 April 2015.

4 Document provided by Rio Tinto on 28 April 2015.

5 Document provided by the Australian Taxation Office on 1 May 2015.

Additional information

Received in the 45th Parliament

6 Document provided by Professor Richard Vann following the public hearing held in Sydney on 4 July 2017.

Additional hearing information

Received in the 45th Parliament

1 Hansard correction provided by Associate Professor Lanis following a public hearing held in Perth on 28 April 2017.

Appendix 3
Public hearings

Sydney, 8 April 2015

Members in attendance: Senators Canavan, Dastyari, Edwards, Ketter, Milne, Xenophon.

CARLSON, Mr Anthony, Member, New South Wales Branch, United Voice

CARNEGIE, Ms Maile, Managing Director, Google Australia

CLARKE, Mr Julian, Chief Executive Officer, News Corp Australia

CRANSTON, Mr Michael, Acting Second Commissioner, Compliance Group, Australian Taxation Office

DOYLE, Ms Kay, Member, New South Wales Branch, United Voice

HASTINGS, Ms Debbie, First Assistant Commissioner, Review and Dispute Resolution, Australian Taxation Office

HIRSCHHORN, Mr Jeremy, Deputy Commissioner, Public Groups, Australian Taxation Office

JORDAN, Mr Chris, Commissioner of Taxation, Australian Taxation Office

KING, Mr Tony, Managing Director, Australia and New Zealand, Apple Pty Ltd

KONZA, Mr Mark, Deputy Commissioner, International, Australian Taxation Office

MAKAS, Mr Manuel, Director and Head of Real Estate, Greenwoods & Herbert Smith Freehills

MIHNO, Mr Andrew, Executive Director, International and Capital Markets, Property Council of Australia

MILLS, Mr Andrew, Second Commissioner, Law Design and Practice, Australian Taxation Office

MORRISON, Mr Ken, Chief Executive Officer, Property Council of Australia

O'BYRNE, Mr David, National Secretary, United Voice

PANUCCIO, Ms Susan, Chief Financial Officer, News Corp Australia

SADIQ, Professor Kerrie, Private capacity

SAMPLE, Mr Bill, Corporate Vice-President, Worldwide Tax, Microsoft Corporation

TING, Associate Professor Antony Ka Fai, Private capacity

VANN, Professor Richard John, Private capacity

WARD, Mr Jason, Research Coordinator, United Voice

Canberra, 9 April 2015

Members in attendance: Senators Dastyari, Edwards, Ketter, Milne.

ATFIELD, Mr Michael, Manager, Corporate and International Tax Division, The Treasury

DENNISS, Dr Richard, Executive Director, The Australia Institute

GARNON, Ms Rosheen, National Managing Partner, Tax, KPMG

GROPP, Ms Lisa, Chief Economist, Business Council of Australia

HEFEREN, Mr Robert, Deputy Secretary, The Treasury

MCCULLOCH, Ms Luise, General Manager, Corporate and International Tax Division, The Treasury

MCKENNA, Mr Brendan, Manager, Corporate and International Tax Division, The Treasury

McLEOD, Mr Rob, Partner, EY

NIVEN, Mr Doug, Senior Executive Leader, Australian Securities and Investments Commission

PRICE, Mr John, Commissioner, Australian Securities and Investments Commission

PUGH, Ms Cathy, Community and Public Sector Union Section Councillor, Australian Taxation Office, and Community and Public Sector Union Delegate

RICHARDSON, Mr David, Senior Research Fellow, The Australia Institute

SAINT-AMANS, Mr Pascal, Director, Centre for Tax Policy and Administration, Organisation for Economic Co-operation and Development

STOJANOVSKI, Mr Pero, Senior Economist, Business Council of Australia

TANZER, Mr Greg, Commissioner, Australian Securities and Investments Commission

VAN BARNEVELD, Dr Kristin, Director of Research, Community and Public Sector Union

WARDELL-JOHNSON, Mr Grant, Partner in Charge, KPMG Tax Centre, KPMG

WATERS, Mr Alistair, National President, Community and Public Sector Union

WILLIAMS, Mr Glenn, Partner, EY

Melbourne, 10 April 2015

Members in attendance: Senators Canavan, Dastyari, Edwards, Ketter, Milne, Whish-Wilson, Xenophon.

BAINI, Mr Joseph, Private capacity

COLLINS, Mr Peter, National Leader, International Tax Services, PricewaterhouseCoopers

CUDMORE, Mr Tony, President, Corporate Affairs, BHP Billiton

DE NIESE Ms Michelle, Executive Director, Corporate Tax Association

EDMANDS, Mr Phil, Managing Director, Rio Tinto Australia

GROTH, Ms Sheridan, Company Secretary, Adani Mining Pty Ltd

HUGHES, Mr Marcus, Group Manager, Taxation, Fortescue Metals Group Limited

KHANDELWAL, Mr Praveen, Chief Financial Officer, Adani Mining Pty Ltd

LOCK, Mr Martin, Private capacity

McCARTHY, Ms Cassandra, Corporate Affairs, Australia, Glencore

MICHIE, Ms Jane, Head of Group Tax, BHP Billiton

PEARCE, Mr Stephen, Chief Financial Officer, Fortescue Metals Group Limited

RILEY, Mr Paul, Partner, Head of Tax, Deloitte Touche Tohmatsu

SEYMOUR, Mr Thomas, Managing Partner, Tax and Legal, PricewaterhouseCoopers

SMITH, Mr Dominic, Tax Manager, Glencore

STEWART, Professor Miranda, Director, Tax and Transfer Policy Institute

SUPPREE, Mr Paul, Assistant Director, Corporate Tax Association

TALINTYRE, Mr Nick, Australian Regional Finance Lead, Glencore

WATKINS, Mr David, Partner, Leader of Tax Insights and Policy, Deloitte Touche Tohmatsu

WOLFF, Ms Anne-Maree, General Manager, Taxation, Asia Pacific, Rio Tinto

ZABAR, Mr Joseph, Director, Services Sustainability, UnitingCare Australia

ZIRNSAK, Dr Mark, Director, Justice and International Mission Unit, Uniting Church in Australia,

Synod of Victoria and Tasmania

Sydney, 22 April 2015

Members in attendance: Senators Dastyari, Edwards, Ketter, Milne, Xenophon.

HIRSCHHORN, Mr Jeremy, Deputy Commissioner, Public Groups, Australian Taxation Office

JORDAN, Mr Chris, Commissioner of Taxation, Australian Taxation Office

KONZA, Mr Mark, Deputy Commissioner, International, Australian Taxation Office

Sydney, 1 July 2015

Members in attendance: Senators Dastyari, Edwards, Milne, Xenophon.

DODD, Mr Paul, Finance Director, Merck, Sharp and Dohme

ECKELMANN, Dr Oliver, Chief Financial Officer, Roche Products Pty Ltd FARQUHAR, Mr Simon, Chief Financial Officer and Company Secretary, Johnson & Johnson

FLETCHER, Mr Joseph, Finance Director, Eli Lilly Australia Pty Ltd

FORSTNER, Mr Marco, Financial Controller, Australia and New Zealand, AstraZeneca Pty Ltd

GALLAGHER, Mr David, Chairman and Managing Director, Pfizer Australia Pty Ltd

GEIGER, Ms Melissa, Global Head of Tax, GlaxoSmithKline

GEORGE, Mr Tony, Head of Finance Operations, Australia and New Zealand, Pfizer Australia Pty Ltd

JORDAN, Mr Chris, Commissioner of Taxation, Australian Taxation Office

KONZA, Mr Mark, Deputy Commissioner, Public Groups International, Australian Taxation Office

McALLISTER, Mr Laurie, Managing Director, Sanofi

McDONALD, Mr Geoffrey Michael, Vice President and General Manager, GlaxoSmithKline Australia Ltd

RICHARDS, Mrs Nicola, Head of Public Affairs and Policy, Merck, Sharp and Dohme

SHARKEY, Mr James, Director Market Access, External Affairs, Commercial Innovation and Legal, AstraZeneca Pty Ltd

SUNDARAM, Ms Malini, Country Chief Financial Officer, Novartis Australia

VITALIS, Ms Laurence, Chief Financial Officer, Sanofi Australia

WEINGROD, Ms Louise, Vice President, Global Taxation, Johnson & Johnson

Sydney, 18 November 2015

Members in attendance: Senators Back, Dastyari, Di Natale, Edwards, Ketter, McAllister, Xenophon.

BROWN, Mr Stuart, Tax Manager ExxonMobil Australia Group of Companies

COLLINS, Mr Peter, National Leader, International Tax Services, PricewaterhouseCoopers Australia

CONDON, Mr John, Assistant Tax Director, Fuels Asia Pacific, BP Australia Pty Ltd

HEPWORTH, Mr Simon, Chief Financial Officer, Caltex Australia

HIRSCHHORN, Mr Jeremy, Deputy Commissioner, Public Groups, Australian Taxation Office

HOLMES, Mr Andy, Chief Operating Officer, Fuels Asia Pacific, and Country Head, BP Australia Pty Ltd

JORDAN, Mr Chris, Commissioner of Taxation, Australian Taxation Office

KITSCHKE, Mr Brad, Director of Public Policy, Australia and New Zealand, Uber Australia Pty Ltd

KONZA, Mr Mark, Deputy Commissioner, International, Australian Taxation Office

KRZYWOSINSKI, Mr Roy, Managing Director, Chevron Australia

LAWRY, Mr Michael, Tax Manager, Santos Ltd

LIM, Mr Peter, Executive General Manager, Legal and Corporate Affairs, and Company Secretary, Caltex Australia

LINKE, Mr David, National Managing Partner, Tax and Legal, KPMG

MACFARLANE, Mr CN (Sandy), Vice President and General Tax Counsel, Chevron Corporation

MCDONAGH, Mr Sam, Country Manager, Australia and New Zealand, Airbnb Australia Pty Ltd

McKINNELL, Ms Anthea, Vice President, Treasury and Taxation, Woodside Energy Ltd

MCLEAN, Mr Alan, Executive Vice President Taxation, Shell Australia

MCLEOD, Mr Rob, Tax Partner, Ernst & Young

MILLS, Mr Andrew, Second Commissioner, Law Design and Practice, Australian Taxation Office

MOSES, Ms Karen, Executive Director, Finance and Strategy, Origin Energy Ltd

OWEN, Mr Richard, Chairman, ExxonMobil Australia Group of Companies

PEACH, Ms Kris, Chair and Chief Executive Officer, Australian Accounting Standards Board

PRATT, Mr Greg, Executive Consultant, Ernst & Young

PRINCIPE, Mr Tony, General Manager, Taxation, Origin Energy Ltd

SEATON, Mr Andrew, Chief Financial Officer, Santos Ltd

SEYMOUR, Mr Thomas, Managing Partner, Tax and Legal, PricewaterhouseCoopers Australia

SMITH, Mr Andrew, Country Chair, Shell Australia

THOMSON, Mr Angus, Research Director, Australian Accounting Standards Board

TODD, Mr Brett, National Managing Partner, Tax, Deloitte Touche Tohmatsu

TREMAINE, Mr Lawrence John, Chief Financial Officer and Executive Vice President, Treasury and Taxation, Woodside Energy Ltd

WARDELL-JOHNSON, Mr Grant, Partner in Charge, Australian Tax Centre, KPMG

WATKINS, Mr David, Partner Tax Insights and Policy, Deloitte Touche Tohmatsu

WYATT, Mr Scott, Chief Executive Officer, Viva Energy Australia Pty Ltd

Canberra, 21 April 2016

Members in attendance: Senators Dastyari, Edwards, Ketter, Lambie, McAllister, Smith, Whish-Wilson, Xenophon.

AKHTAR, Dr Shumi, Senior Lecturer in Finance, Business School, University of Sydney

CRANSTON, Mr Michael, Deputy Commissioner, Private Groups and High Wealth Individuals, Australian Taxation Office

HIRSCHHORN, Mr Jeremy, Deputy Commissioner, Public Groups, Australian Taxation Office

JORDAN, Mr Chris, Commissioner of Taxation, Australian Taxation Office

KONZA, Mr Mark, Deputy Commissioner, International, Australian Taxation Office

LANIS, Associate Professor Roman, Associate Professor, University of Technology, Sydney

McCLURE, Mr Ross William, PhD Candidate and Casual Academic, University of Technology, Sydney

WILKINSON, Ms Marian, Journalist, Four Corners, Australian Broadcasting Corporation

ZIRNSAK, Dr Mark Andrew, Spokesperson, Tax Justice Network Australia

Perth, 28 April 2017

Members in attendance: Senators Dastyari, McAllister, Smith, Sterle, Whish-Wilson.

ABBOTT, Mr Anthony, Senior Vice-President, Corporate and Legal, Woodside Energy Limited 29

BEAVEN, Mr Peter, Chief Financial Officer, BHP Billiton

BROWN, Mr Stuart, Tax Manager, ExxonMobil Australia

CAREY, Mr Michael John, Vice President, Finance, Australia and New Zealand, Shell Australia

CONDON, Mr John Edward, Director, BP Australia Group Pty Ltd

FENNER, Mr Michael, Taxation Manager, Chevron Australia

FITZPATRICK, Ms Claire Helen, Managing Director, Exploration and Production Australia, BP Developments Australia Pty Ltd

GOVENDIR, Dr Brett, Academic, University of Technology Sydney

HEARNE, Mr Nigel, Managing Director, Chevron Australia

HIRSCHHORN, Mr Jeremy, Deputy Commissioner, Public Groups and International, Australian Taxation Office

KONZA, Mr Mark, Deputy Commissioner, International, Australian Taxation Office

LAING, Mrs Andrea May, Country Tax Lead, Australia and New Zealand, Shell Australia

LANIS, Professor Roman, Associate Professor, University of Technology Sydney

LEWIS, Mr Marc, Global Head of Tax, Woodside Energy Limited

McCLURE, Mr Ross William, PhD Candidate, University of Technology Sydney

McKINNELL, Miss Anthea, Acting Chief Financial Officer, Woodside Energy Limited

MICHIE, Ms Jane, Group Tax Officer, BHP Billiton

MULLEN, Mr Noel, Deputy Chief Executive, Australian Petroleum Production & Exploration Association

NORRIS, Mr David Allan, General Manager, Royalties Branch, Department of Mines and Petroleum, Western Australia

OOSTING, Mr Paul, National Director, GetUp!

OWEN, Mr Richard, Chairman, ExxonMobil Australia

ROBERTS, Dr Malcolm, Chief Executive, Australian Petroleum Production & Exploration Association

SALMOND, Mr Graham, General Manager Australia, Petroleum Australia Production, BHP Billiton

WARD, Mr Jason, Spokesperson, Tax Justice Network Australia; Senior Global Strategist, International Transport Workers' Federation

WATSON, Mr Richard Kenneth, Executive Director, Economic, Department of Treasury, Western Australia

Canberra, 3 July 2017

Members in attendance: Senators Dastyari, Hume, McAllister, Whish-Wilson.

CALLAGHAN, Mr Michael, Private capacity

CATO, Ms Jessie, National Coordinator, Publish What You Pay Australia

DWYER, Mr Damian, Director, Economics, Australian Petroleum Production and Exploration Association

EDWARDS, Ms Heidi, Acting Manager Taxation, Santos Ltd

FRANCIS, Mr Geoff, Head of Secretariat, Petroleum Resource Rent Tax Review, Department of the Treasury

HIRSCHHORN, Mr Jeremy, Deputy Commissioner, Public Groups, Australian Taxation Office

KONZA, Mr Mark, Deputy Commissioner, International, Australian Taxation Office

KRAAL, Dr Diane, Private capacity

LAWRY, Mr Michael, Tax Consultant, Santos Ltd

MULLEN, Mr Noel, Deputy Chief Executive, Australian Petroleum Production and Exploration Association

NEILSON, Mr Anthony, Chief Financial Officer, Santos Ltd

REAKES, Mr Joshua, Acting Manager, Taxation and Analysis Section, Department of Industry, Innovation and Science

SHELDRICK, Mr Michael, General Manager, Onshore Energy Branch, Department of Industry, Innovation and Science

WARD, Mr Jason, Spokesperson, Tax Justice Network Australia

WILSON, Mr Bruce, First Assistant Secretary, Resources Division, Department of Industry, Innovation and Science

Sydney, 4 July 2017

Members in attendance: Senators Hume, Ketter, McAllister, Whish-Wilson.

EMERSON, the Hon. Dr Craig, Private capacity

TING, Associate Professor Dr Antony, Private capacity

VANN, Professor Richard John, Private capacity

WEST, Mr Michael, Journalist and Proprietor, michaelwest.com.au

Sydney, 22 August 2017

Members in attendance: Senators Hume, Ketter, McAllister, Xenophon.

ANSTIS, Mr Clark, Technical Principal, Australian Accounting Standards Board

BUHMAN, Mr John, Chief Financial Officer, IBM Australia and New Zealand

GOFF, Mr Daniel, Corporate Vice President WorldWide Tax, Microsoft Corporation

JORDAN, Mr Chris, Commissioner of Taxation, Australian Taxation Office

KING, Mr Tony, Managing Director, Apple Pty Ltd

KONZA, Mr Mark, Deputy Commissioner, Public Groups and International, Australian Taxation Office

PEACH, Ms Kris, Chair, Australian Accounting Standards Board

PRICE, Mr Ted, Vice President of Tax and Treasury, Facebook Inc.

PURCELL, Mr Kerry, Managing Director, IBM Australia and New Zealand

RICHARDSON, Mr Damon, Director, International Tax, Google

ZIRNSAK, Dr Mark, Director, Social Justice, Uniting Church of Australia, Synod of Victoria and Tasmania

Melbourne, 14 March 2018

Members in attendance: Senators Cameron, Hume, Ketter, Kitching, Marshall.

BROWN, Mr Stuart, Tax Manager, ExxonMobil Australia

CAMPBELL, Mr Roderick, Research Director, Australia Institute

CATO, Ms Jessie, National Coordinator, Publish What You Pay Australia

FLETCHER, Dr Luke, Executive Director, Jubilee Australia Research Centre

HARDGROVE, Mr Craig, Chief Financial Officer, ExxonMobil Australia

HIRSCHHORN, Mr Jeremy, Deputy Commissioner, Public Groups and International, Australian Taxation Office

KONZA, Mr Mark, Deputy Commissioner, Public Groups and International, Australian Taxation Office

McCALLUM, Mr Lance, National Campaign Coordinator, Australian Council of Trade Unions

McCULLOUGH, Mr Paul, Division Head, Revenue Group, Corporate and International Tax Division, Department of the Treasury

OWEN, Mr Richard, Chairman, ExxonMobil Australia

POTTS, Mr William, Senior Adviser, Revenue Group, Corporate and International Tax Division, Department of the Treasury

SHIELDS, Mr Tony, Adjunt Fellow, Australia Institute

WARD, Mr Jason, Spokesperson/Researcher, Tax Justice Network – Australia and Make Exxon Pay Coalition

WATTS, Mr Christopher, Social Policy Advisor, Australian Council of Trade Unions