



# STOPPING CORPORATE TAX AVOIDANCE DISCUSSION PAPER

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Tax avoidance by big business in Australia is endemic and immediate steps must be taken to prevent further billions in tax being lost to the big end of town. There are many measures Australia can take right now to stop big business taking Australians for a ride.

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Big corporates are exploiting loopholes in our tax laws and the global nature of their business to avoid tax. Billions of dollars are being lost to Australians via so-called aggressive tax planning that could be spent on schools, hospitals and creating the jobs of the future.

These companies artificially shift their profits and losses around the world through their networks of subsidiaries to reduce the amount of tax that they pay. This results in Australia missing out on billions of dollars in revenue that should be paid here in Australia. Every dollar they hide is money lost to fund public infrastructure like schools, hospitals, and public transport.

Our Tax Commissioner has said that the corporate tax base is “under threat”<sup>i</sup> as a result of these activities.

We cannot sit on our hands and wait for the OECD and G20 to deliver a global agreement, we must ensure we do everything we can domestically to ensure everyone – big companies included – pay their share of tax.

## > Measures to implement now

### 1. Increased transparency and reporting of subsidiaries, strengthening the tax act on profit shifting

- Mandatory public reporting of all subsidiaries
- Public register of beneficial owners of companies
- Name and shame the worst offenders of profit shifting
- Passage of Corporations Amendment (Publish What You Pay) Bill 2014

### 2. Properly resourcing the Australian Tax Office

- Reverse the 4700 job cuts

- Resource a dedicated high-level team of forensic accountants and tax lawyers to tackle tax avoidance

### 3. Make public the ATO’s settlement register

- Introduce legislation to immediately make public the ATO’s settlement register.

### 4. Legal protections for private sector whistle-blowers

- Introduce corporate whistleblower protection laws
- Create a US style false claims act, so that whistleblowers can get a cut of the collected revenue if the ATO succeeds in prosecutions of tax fraud on the basis of the disclosure.

### 5. Strengthening the role of ASIC

- Increased disclosure of related party information in financial reports
- Remove ‘grandfathered’ exemption provision for large proprietary companies
- Proprietary companies to confirm to ASIC whether they remain a small company
- Strengthen the information sharing between ASIC and the ATO
- Immediately review the 1,134<sup>ii</sup> exemptions granted to small proprietary companies controlled by a foreign company,



## > Open up the books

We cannot tax what we cannot see. Both the public and the Parliament have a right to know which companies are dodging their taxes.

Big corporates are exploiting loopholes in our tax laws and the global nature of their business to avoid tax. Billions are being lost to Australians via so-called aggressive tax planning that could be spent on schools, hospitals and creating jobs.

Large companies use networks of subsidiary companies to hide their transactions and avoid tax, and shift their profits around the world to reduce the amount of tax that they pay.

### **The Greens proposal:**

It is proposed the Parliament immediately amend tax regulations to increase transparency and accountability standards by:

- i. Having compulsory reporting for big multinational firms, with high levels of detail about their activities and tax arrangements.
- ii. Removing the ability of Australian subsidiaries of large foreign multinational companies to be able to claim exemption from the parts of the *Corporations Act* that require financial reporting.
- iii. Introducing 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 used by companies. Australia should also support this becoming a global standard.<sup>iii</sup>
- iv. Naming and shaming the worst offenders of profit shifting and not allow the ATO to provide them cover – this information should again be put back on the public record so the public is fully aware.
- v. Requiring country-by-country and project-by-project reporting of payments contained in the Greens' *Publish What You Pay Bill* currently before Parliament. Consolidated annual reports would need to include revenues, profits, staffing levels and taxes paid in each country in which they operate or have subsidiaries. These reports should be made public for the benefit of investors, those that need to do business with multinational enterprises and to ensure the confidence of the general public that profits of multinational enterprises are being taxed where the economic activities deriving the profits are performed and where value is created.<sup>iv</sup>

## CASE STUDY: APPLE

Investigators for the US Congress have filed documents that illustrate Apple products made in China are resold to Apple retailers in Australia after an Irish subsidiary takes "paper" ownership in transit. Ireland then collects the profits, and Australia misses out.

Antony Ting, witness to inquiry and Sydney University expert on iPads: "When you pay the \$600 for this beautiful iPad, \$550 in fact is paid to Ireland. Apple has a subsidiary there. That means it leaves very little profit to be taxed in Australia. To make it worse, out of the \$550 paid to Ireland, \$220 is never taxed anywhere in the world." (ABC 7.30, 8 April 2015)

## > Resource the ATO

Staff cuts at the Australian Taxation Office have hurt its ability to pursue large companies.

While we attempt to crack down on corporate tax avoidance, the ATO has been subject to massive job cuts. The Australian Taxation Office has cut 4400 jobs in the past 19 months<sup>v</sup> with the Senate inquiry hearing testimony many of them were "our go-to" people. Most of these cuts have come from the compliance area. 500 of these jobs were from the audit team<sup>vi</sup>, with more losses expected. The audit team is tasked with enforcing the tax compliance of individuals and multinational companies - one of the core functions of the ATO and critical to cracking down on profit shifting by multinational firms.

The Government's program of cuts calls for a reduction of 4700 staff by 2018<sup>vii</sup>

In a survey of staff by the CPSU<sup>viii</sup>, respondents reported that cases that would have been vigorously investigated in the past were now being waved through. One staff member said: "I know of examples where cases are compromised on the basis of 'we don't have the resources to deal with it'". 75% of respondents agreed that budget cuts had affected the ATO's capacity to monitor and audit companies rated a risk of tax avoidance.

These cuts to ATO capacity are massively undermining the ability of our public service to catch and prosecute corporate tax avoiders

### **The Greens proposal:**

The Abbott Government must immediately restore the 4700 jobs it has cut from the ATO.



We cannot fight international profit shifting and tax evasion without the expertise, and salaries to match, in the ATO.

A new unit, within the ATO, should be established, to work full time on tackling multinational tax avoidance. It needs to have the funding to poach the highest quality forensic accountants and tax lawyers from the big four accounting firms who are currently far better resourced than the ATO.

## > No more 'taxation by negotiation'

The big four accounting firms that represent these multinational companies are so well equipped, the ATO is alleged to be settling a lot of tax disputes with large companies, often even before it has consulted its own lawyers.

Ex-ATO official Martin Lock<sup>ix</sup> appeared at the Senate inquiry, and outlined that the ATO commonly uses settlements with big business. He said one case against a big 4 bank saw a tax bill of \$100 million reduced to \$30 million on settlement.

This fails the Australian taxpayer – big companies are not paying the tax that they are required to, and the ATO is letting them get away with it because of the costs and technicalities of pursuing them in the courts.

This problem is compounded by the fact that the ATO keeps a register of these settlements, but it is not public. There is little transparency and accountability about how these settlements are made, and there needs to be.

### **The Greens proposal:**

The Parliament must pass legislation to immediately make public the ATO's settlement register that shows how much was claimed by the ATO against the company and how much was ultimately settled for. This way everyone will know to what extent we are missing out on revenue from the big end of town.

## > Reforms to ASIC

ASIC is under resourced and understaffed, and relying heavily on various forms of self-reporting and self-regulation. One of these mechanisms is the use of its "class order" powers, which allow companies to declare that they're small proprietaries of foreign corporations, and thus avoiding requirements to lodge audited financial statements.<sup>x</sup> According to testimony from Senate Estimates in October 2014, most of the more than 1.7 million Australian proprietary companies are not required by the Corporations Act to lodge financial reports with ASIC.

By declaring they are a 'small proprietary', the company is then exempt from normal tax rules, and don't have to disclose as much information. But, how did the \$US230 Billion company, Facebook, manage get an exemption from ASIC from being a

"large company"?<sup>xi</sup> One of the biggest problems is that there is no requirement for these companies to confirm to ASIC that they are small for each financial year, which would act as a trigger for the companies and their directors to review the company's status.

### **The Greens proposal:**

In its submission to the inquiry, ASIC outlined a number of possible amendments to strengthen the information sharing between ASIC and the ATO, thereby increasing transparency.<sup>xii</sup> The Parliament should support ASIC's requests:

- i. The requirement for non-reporting entities to make these disclosures in financial reports under the *Corporations Act* if notified to do so by the ATO.
- ii. The concept of 'grandfathered large proprietary companies' could be removed from the Corporations Act and these companies required to lodge financial reports with ASIC. This would remove any inequity with similar companies that are required to lodge financial reports. Consideration may need to be given to privacy concerns that may have contributed to the original decision to provide the grandfathering exemption.
- iii. Proprietary companies could be required by the Corporations Act to confirm to ASIC whether they remain small. However, this would need to be balanced against the administrative cost and red tape imposed on the vast majority of proprietary companies that are small for any given year. There is also likely to be a cost to ASIC in following up companies that do not confirm their status for any given year.
- iv. The confidentiality provisions in s127 of the ASIC Act could be amended to put beyond doubt that ASIC is able to freely share information with the ATO without the need to provide procedural fairness to the affected person.
- v. To assist in this process, the Greens are calling on ASIC to immediately review the 1,134<sup>xiii</sup> exemptions granted to small proprietary companies controlled by a foreign company.

## > Blow the Whistle

The culture in these global companies and big accounting firms will change if they know there are real protections and opportunities for people who expose wrongdoing.

Currently, the complete absence of private-sector whistleblower protection in Australia makes it difficult for employees to come forward, in the public interest, when they know corruption is occurring.

This causes financial losses, as well as loss of integrity in our corporate sector: Ben Allen, a partner at Norton Rose Fulbright,



says American style laws would encourage whistleblowing against fraud in the private sector that was "ultimately costing millions, if not billions, of taxpayer dollars each year".<sup>xiv</sup>

Australia lags behind the rest of the G20 when it comes to whistle-blower protection

**The Greens proposal:**

Whistleblowers need both legal protection to ensure they come forward and financial incentives to create a change of culture within an organisation.

The US has a system that has delivered its tax agencies billions of dollars by providing whistleblowers with a cut of any money collected by authorities as a result of their disclosure.<sup>xv</sup>

Australians are already using the American system to blow the whistle on American companies,<sup>xvi</sup> and they should be protected to do the same here at home.

The Parliament needs to pass both corporate whistleblower protection laws and create a US style *False Claims Act*, so that our tax agencies can rely on those in the private sector to act in the broader public interest.

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<sup>i</sup> <http://www.smh.com.au/business/ato-chief-warns-on-profit-shifting-20130626-2oxlw.html>

<sup>ii</sup> ASIC submission to Senate Standing Committee on Economics inquiry into Tax Avoidance, Appendix 1, available at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Corporate\\_Tax\\_Avoidance/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Corporate_Tax_Avoidance/Submissions)

<sup>iii</sup> Recommendation taken directly from Uniting Church submission to inquiry

<sup>iv</sup> Recommendation taken directly from Uniting Church submission to inquiry

<sup>v</sup> <http://www.canberratimes.com.au/national/public-service/australian-taxation-office-axes-4400-jobs-in-19-months-20150409-1mhhgq.html>

<sup>vi</sup> <http://www.smh.com.au/business/tax-office-reels-after-staff-losses-20141114-11mh50.html>

<sup>vii</sup> <http://www.smh.com.au/business/tax-cheats-to-win-from-ato-cuts-insiders-say-20150116-12nt1o.html>

<sup>viii</sup> *Ibid.*

<sup>ix</sup> <http://www.smh.com.au/business/the-economy/corporate-tax-exato-official-criticises-rushed-settlements-climate-of-fear-20150410-1mih87.html>

<sup>x</sup> [http://www.crikey.com.au/2014/10/23/asic-flatlines-at-estimates-as-the-regulator-looks-to-relaunch/?wpmp\\_switcher=mobile](http://www.crikey.com.au/2014/10/23/asic-flatlines-at-estimates-as-the-regulator-looks-to-relaunch/?wpmp_switcher=mobile)

<sup>xi</sup> <http://www.smh.com.au/business/the-economy/senate-tax-avoidance-inquiry-the-secret-of-its-success-20150409-1mhpei.html>

<sup>xii</sup> ASIC submission to Senate Standing Committee on Economics inquiry into Tax Avoidance, p. 20, available at

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Corporate\\_Tax\\_Avoidance/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Corporate_Tax_Avoidance/Submissions)

<sup>xiii</sup> ASIC submission to Senate Standing Committee on Economics inquiry into Tax Avoidance, p. 13, available at

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Corporate\\_Tax\\_Avoidance/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Corporate_Tax_Avoidance/Submissions)

<sup>xiv</sup> Quoted in <http://www.smh.com.au/business/the-price-of-speaking-out-20130809-2rngk.html>

<sup>xv</sup> This approach has the backing of groups including the Australian Federal Police Association and the Tax Justice Network

<sup>xvi</sup> <http://www.smh.com.au/business/australian-whistleblowers-provide-tipoffs-for-us-scheme-amid-criticism-of-laws-at-home-20140119-312op.html>