ANZ SUBMISSION TO THE SENATE STANDING COMMITTEE INQUIRY ON CORPORATE TAX AVOIDANCE

ANZ welcomes the opportunity to provide a submission to the upcoming Senate Economics References Committee's inquiry into alleged corporate tax avoidance and minimisation. In particular, ANZ is concerned by the current debate which has resulted from the report into corporate taxation in Australia released by the Tax Justice Network. The report suggests ANZ, among others, has underpaid its Australian corporate tax liabilities. As this submission will demonstrate, ANZ has paid, and continues to pay, its Australian tax liabilities in full in accordance with the tax laws.

ANZ is among the top four banks in Australia, the largest banking group in New Zealand and the Pacific, and among the top 50 banks in the world. Our history dates back over 175 years, and we now operate in 33 markets globally with representation in Australia, New Zealand, Asia, Pacific, the Middle East, Europe, and America. We provide a range of banking and financial products and services to around eight million personal, commercial and institutional customers, and we employ approximately 50,000 people worldwide.

ANZ is building the best connected, most respected bank across the Asia Pacific region. The strategy has three key elements – strong domestic markets, profitable Asian growth and an enterprise wide approach to operations and technology. Our strategy is based on the belief that the future of our home markets of Australia and New Zealand are increasingly linked to the fast growing region of Asia through trade, capital and wealth flows.

ANZ agrees that Australian businesses should pay tax on their Australian profits. Taxation of multinational corporations is a highly complex matter and information is always subject to various interpretations. All information in this submission that is related to ANZ has been previously made public or been provided to the Australian Taxation Office.

ANZ supports the work being undertaken by the G-20 and OECD to address real concerns over base erosion and profit shifting. ANZ believes that it is critical that this work remains coordinated at a multilateral level and is carried out with full consultation. Unilateral action creates risk of placing Australian companies seeking to operate and grow their business internationally at a competitive disadvantage. ANZ also supports the Government's proposal for a White Paper on tax reform.

The invitation sent to ANZ CEO, Mike Smith, on 27 October 2014 raises a number of matters that are relevant to all companies operating in Australia. The invitation was also clear that it was not necessary to address the full terms of reference but did specifically request that ANZ include information on its *"tax arrangements, especially the company's effective tax rates and the strategies used to minimise the amount paid in taxes".*

ANZ is a member of both the Business Council of Australia and Corporate Tax Association and supports their submissions on the committee's terms of reference. This submission will address matters specific to ANZ, including the specific request in the invitation. We believe it is relevant to first draw the Committee's attention to ANZ's Tax Governance Policy and ANZ's ongoing commitment to tax transparency.

ANZ Tax Governance Policy

ANZ has a Board approved tax governance policy which applies globally and underpins the Group's tax risk management strategy. In particular, we would like to bring to the Committee's attention the following key extracts from the policy:

- ANZ has implemented compliance policies, procedures, and programs to comply with the tax laws in all the countries where we operate. Tax compliance is a fundamental part of the culture and the business practices of ANZ and its controlled entities.

- ANZ's tax affairs must be managed in accordance with the Group's low tax risk appetite.

- Transactions should exhibit clear commercial outcomes and attributes without reliance on their tax effect for their commercial viability.

A summary of the ANZ Tax Governance Policy is available to the public online at http://www.anz.com.au/about-us/corporate-responsibility/more-mike/group-widepolicies/.

Commitment to tax transparency

Consistent with the core principles underpinning the ANZ Tax Governance Policy, ANZ entered into an Annual Compliance Arrangement with the Australian Taxation Office encompassing income tax on 20 October 2008. ANZ was the first corporate taxpayer to enter into such an arrangement, which supplemented an existing agreement which covered Goods and Services Tax and FBT (see Attachment 1). Under the Annual Compliance Arrangement ANZ has an obligation to disclose to the Australian Taxation Office all material income tax risks and areas of uncertainty on a real time basis. The Australian Taxation Office undertakes a review of the ANZ annual income tax return shortly after lodgement. ANZ renewed the Annual Compliance Arrangement on 11 June 2013 to extend through to the 2016 fiscal year. Every fiscal year's tax return, up to and including the fiscal year ending 30 September 2013, have been reviewed by the Australian Taxation Office.

Legislation announced in the 2013 Federal Budget has been introduced requiring the Australian Taxation Office to publish certain information taken from the 2014 income tax returns of companies with income of $100m or more. This is expected to be published in 2015 once 2014 tax returns have been lodged. Consistent with our culture of tax transparency, ANZ has published the same information one year earlier then required based on its 2013 tax return. This can be seen on page 68 of our 2014 Corporate Sustainability Report.

A copy of the 2014 Corporate Responsibility Review is available to the public online at http://www.anz.com.au/about-us/corporate-responsibility/cr-library/.

Tax Justice Network Report

ANZ was listed in the Tax Justice Network ("TJN") Report of having an effective tax rate of 27% for the period 2004 to 2013. The report lists ANZ as having an *"average annual forgone tax"* amount of $166,840,000. This statement is inaccurate for the following reasons:

- To begin with, the data used in the TJN report does not reconcile with ANZ's reported statutory results for the years in question. We have asked the TJN to explain and they referred us to Morningstar who provided the source data. However, the Morningstar source data is also in question as the global pre-tax profits reported in their analysis differs from ANZ's reported global statutory profits. As of the date of this submission, we have still not received a satisfactory explanation as to why the TJN/Morningstar numbers differ from our reported results.

- The analysis undertaken by the TJN relied on the "tax paid" amount disclosed in the cash flow statement as the basis to determine the "foregone tax" for the year in question. Under Australian income tax law, companies are required to finalise their annual tax calculation and make a final payment to the Australian Taxation Office after their fiscal year ends. For example, ANZ made a payment of $710m after 30 September 2013 which was not taken into account in the TJN analysis even though it related to the 2013 year.

- The basis of calculating the "*foregone tax*" in the TJN report was based on the pre-tax profits of ANZ's global operations and a presumption that all of those profits should be taxed at 30% in Australia. As stated above ANZ operates in 32 other countries each of which has the right to tax profits within their jurisdictions. Most of these countries' tax rates applied to companies are lower than Australia's 30% rate.

- For example, in 2013 29% of ANZ's statutory profits were earned outside of Australia. Excluding these profits and the related tax charges results in Australian profits of $6.5b and an Australian tax charge of $2.1b. This would indicate an "effective tax rate" of 32%, which is higher than Australia's 30% statutory company tax rate. Looking back over 5 year's results is a similar outcome, with an effective tax rate of 31.6%. One could go back even further in time but we have no reason to believe the outcome would be any different.

- ANZ's statutory profits include the income of policyholders, which are taxed at either 15% or 0%. The TJN Report does not make appropriate adjustment for this.

The actual facts about ANZ's Australian tax payments

So far, we have only discussed profits and taxes as determined by accounting standards. Tax payments made to governments are calculated under each country's tax laws.

- Under Australian tax law, banks with life insurance companies must include the income of their policyholders in their tax return and pay the policyholders tax. This is the case even though the banks have no economic interest in the policyholder's assets. Policyholder income is taxed at either 15% or 0%. The taxable income and tax payments of policyholders is combined with the taxable income of ANZ's banking operations which are taxed at 30% and reported in the one tax return lodged with the ATO annually. Each needs to be looked at separately to avoid further confusion.

- Under Australian tax law, in 2013 ANZ had taxable income of $6.662b (excluding policyholder income). This is higher than accounting profits noted above. ANZ made cash payments to the ATO of $1.955b (excluding policyholder tax), which equals 29.3% of taxable income. The reduction from 30% is as a result of income tax offsets available under the tax law of $44m related primarily to the research and development tax concession, foreign tax credits and franking credits. For the 2009 to 2013 period, ANZ's taxable income amounted to $25.219b (excluding policyholder income) and cash payments made to the ATO totalled $7.394b (excluding policyholder tax), which is 29.3% of taxable income. The reduction from 30% is as a result of income tax offsets available under the tax law of $172m again related primarily to the research and development tax concession, foreign tax credits and franking credits. One could go back even further in time but we have no reason to believe the outcome would be any different.

- It is also important to note that the ATO has thoroughly reviewed ANZ's tax returns for all of the years subject to the TJN analysis. The ATO categorises ANZ as a *"Key Taxpayer"* under its risk-differentiation framework. This indicates the ATO's view that there is a *"low risk of non-compliance"* by ANZ.

Effective tax rate

The Committee's terms of reference request that ANZ include information on its effective tax rate and strategies used to minimise the amount paid in taxes. Consistent with the requirements of *AASB 112 Accounting for Income Taxes* the tax expense disclosed in ANZ's annual financial statements is based on the tax law applicable to each country in which ANZ operates. The tax expense calculation is also reviewed by the external auditors as part of their annual audit. The effective tax rate is a result, not a target. As noted above, our policy is to comply with all tax laws wherever we operate with a low appetite for tax-risk.

We trust that you find this information useful and in particular that it corrects any suggestion that ANZ has not fully met all of its Australian tax obligations.

ATTACHMENT 1 – JOINT ATO ANZ MEDIA RELEASE, "FIRST ANNUAL COMPLIANCE ARRANGEMENT SIGNED BETWEEN ATO AND ANZ", 20 OCTOBER 2008

ATTACHMENT 1

Australian Government
Australian Taxation Office

ANZ

Media Release

For Release: 20 October 2008

First annual compliance arrangement signed between ATO and ANZ

The Tax Office and ANZ today signed Australia's first Annual Compliance Arrangement, signalling a more open and transparent approach to managing risks concerning income tax between the Tax Office and corporate Australia.

The signing supplements the existing compliance and risk management arrangements previously signed by ANZ and the Tax Office for goods and services tax (GST) and fringe benefits tax (FBT).

Tax Commissioner Michael D'Ascenzo said Annual Compliance Arrangements are designed to improve practical certainty for large businesses in real time.

"In return for putting tax risks on the table in an open and transparent manner, the Tax Office will sign-off on low risks and develop practical plans with the taxpayer to resolve high risks.

"Taxpayers have indicated they appreciate knowing where they stand shortly after lodging their annual income tax return, and value having access to advice and information from senior tax officers," Mr D'Ascenzo said.

"Large businesses told us they wanted to operate in an environment where we could review – and tick off – transactions as they happen – or at the time their tax return is lodged. Annual Compliance Arrangements go a long way toward achieving this outcome."

ANZ Chief Financial Officer Mr Peter Marriott said: "The Annual Compliance Arrangement, which covers income tax, follows the successful implementation of the Forward Compliance Arrangements for GST in 2006 and for FBT earlier this year. All of these arrangements are sensible compliance and risk management undertakings aimed at enhancing compliance, reducing risk, and increasing certainty for both sides."

ANZ and the Tax Office have worked closely throughout this year to bring about this arrangement.

The Tax Office noted ANZ's strong commitment to corporate governance standards and sound tax risk management processes and to the principles of full and true disclosure to the Tax Office of all material tax matters.

The Annual Compliance Arrangement between ANZ and the Tax Office is effective immediately.

For media enquiries, contact:

Media Relations
Australian Taxation Office
Tel: +61 2 6216 1901

Cherelle Murphy,
ANZ Senior Manager, Media Relations
Tel: +61 3 9273 6190
Email: cherelle.murphy@anz.com