Community and Public Sector Union

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Senate Standing Committees on Economics
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Canberra ACT 2600

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Corporate Tax Avoidance

Dear Committee Secretary

As the primary union representing Australian Public Service employees, the Community and Public Sector Union (CPSU) is committed to providing a strong voice for our members in key public policy and political debates. Decisions around the tax system are central to our members' interests since it raises the revenue required to fund public services.

The CPSU welcomes the opportunity to make a supplementary submission to this inquiry into tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia. The CPSU previously made a submission to this inquiry before it lapsed in 2016.

The opportunity to act unilaterally to address the problem

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. 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.

The CPSU notes that the Commonwealth has recently legislated for a Diverted Profits Tax (DPT) and welcomes this. The DPT is necessary because of the inadequacy of the OECD Base Erosion and Profit Shifting proposals on transfer pricing and the weak proposals on Controlled Foreign Corporations rules. Multinational enterprises will still be free to dodge taxes by locating ownership of Intellectual Property rights in low-tax jurisdictions and treating operating affiliates in source countries as 'limited risk' producers or distributors. A DPT will help to combat these arrangements.

The CPSU does, however, echo concerns by the Tax Justice Network that the 20 per cent tax reduction threshold applying to the DPT may be too high.[1] The Tax Justice Network provided the example of a multinational enterprise with profits of $100 million in Australia which would be permitted to avoid up to $20 million before being caught by the DPT. As the threshold test does not require the ATO to take action, a lower threshold would make it easier for the ATO to take action.[2] The ATO would still need to assess the amount of revenue to be recovered against the cost of the ATO taking action.

The CPSU supports the Tax Justice Network's recommendation of a threshold of 10 per cent tax reduction.[3] The CPSU also supports the Tax Justice Network's recommendation that the ATO should be able to also take action against transactions that result in a $5 million tax reduction if they lack economic substance, even if this is below the 10 per cent threshold.[4]

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;

The enforcement of unilateral measures needs to be supported by a well-funded Australian Taxation Office. While the public is supportive of tackling corporate tax avoidance to raise revenue for public services, there are limits to what the ATO is able to do due to significant under-resourcing. Despite a growing population and increased expectations from the community, ATO ongoing staffing levels have been declining. Between 2013-14 and 2015-16, Average Staffing Levels at the ATO fell by over 4,000 or by nearly a quarter.

In our previous submission, the CPSU outlined how these cuts have significantly impacted the ability of the ATO to detect and deal with tax avoidance and ensure tax compliance.[5] The audit team, responsible for enforcing the tax compliance of individuals and multinational companies was hit particularly hard by these cuts. Though there was an increase in staffing in the 2016-17 Budget, it has not reversed the significant cuts experienced over the last few years. Members strongly express that current levels of resourcing and staffing are inadequate to tackle corporate tax avoidance.

Given the need for more, not less revenue, these previous cuts seem illogical. According to information provided to Senate Estimates by senior ATO staff, the return on investment over the last decade would be between 1:1 and 6:1, or simply put every dollar invested in ATO staff generates between $1 and $6 in revenue.[6] Some had previously estimated that the cuts could lead to a loss of nearly $1 billion in revenue.[7]

This disconnect between public expectations that tax avoidance should be addressed and what the ATO can actually do must be addressed by the Government. It should commit to an increase in base funding and providing more staffing for the ATO if it is serious about tackling corporate tax avoidance and increasing revenue.

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[1] Tax Justice Network Australia (2017, 1 March). Submission on Treasury Laws Amendment (Combating Multinational Tax Avoidance) Bill 2017 and Diverted Profits Tax Bill 2017
[2] ibid
[3] ibid
[4] ibid
[5] Submissions to Corporate Tax Avoidance Senate Inquiry (2015), Tax White Paper (2015), Commonwealth Pre-Budget Consultation (2015-16, 2016-2017, 2017-2018).
[6] Andrew Leigh (2014, 15 July), ATO staff cuts mean millions in tax dodges. Retrieved from http://www.andrewleigh.com/ato_staff_cuts_mean_millions_in_tax_dodges
[7] Gareth Hutchens (2014, 15 July), Fewer ATO jobs may cost $1b in revenue, Sydney Morning Herald. Retrieved from, http://www.smh.com.au/federal-politics/political-news/fewer-ato-jobs-may-cost-1b-in-revenue-20140714-3bxab.html

The treatment and/or payment of PRRT

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.[8] 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.[9]

The CPSU notes current problems with the Petroleum Rent Resource Tax (PRRT) including its lack of transparency and reliance on self-reporting and voluntary compliance. Furthermore, the generous uplift rates for exploration expenses have resulted in PRRT credits that are likely to prevent any significant new PRRT payments for many years to come. There should be much more public transparency and government scrutiny of what project expenses are entitled to uplifts.

A well resourced public service is needed to ensure greater government scrutiny which will improve compliance and deliver more accurate revenue collection. The CPSU notes the recent Australian National Audit Office audit of North West Shelf royalty revenue found the Department of Industry only had a single person doing the royalty collection function, reporting to a supervisor, both of whom had other responsibilities within the Uranium and R&E International Branch of the Department's Resources Division.[10] This example highlights the need for more resources for the Australian Public Service.

The CPSU supports reasonable and fair reforms to the tax regimes that cover oil and gas exploration. The CPSU believes that refunds for decommissioning costs under the PRRT should be eliminated and that the Government should immediately introduce at, a minimum rate of 10 per cent, a Commonwealth royalty on all current and future offshore oil and gas projects that are currently only subject to the PRRT. The CPSU notes that such a new royalty scheme where the oil and gas industry compete on a level playing field is estimated to generate at least $4 to $6 billion over the forward estimates, a significant amount that would help address to Australia's revenue problems.

For further information, please contact Osmond Chiu, Research Officer via email [redacted]

Yours sincerely

[redacted]

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8 James Fernyhough (2015, 15 January). How Australia squandered the mining boom. *The New Daily*. Retrieved from http://thenewdaily.com.au/money/finance-news/2015/01/15/australia-squandered-mining-boom/

9 Jessica Irvine (2013, 14 April). Australian governments have blown mining boom cash, say economists. News.com.au. Retrieved from http://www.news.com.au/national/australian-governments-have-blown-mining-boom-cash-say-economists/news-story/1aeb7d4a118260593506df0b43d82e8e

10 Australian National Audit Office (2016, 28 November). Collection of North West Shelf Royalty Revenue. Retrieved from https://www.anao.gov.au/work/performance-audit/collection-north-west-shelf-royalty-revenue