



THE TAX INSTITUTE
THE MARK OF EXPERTISE

15 September 2015

Dr Kathleen Dermody
Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

Dear Dr Dermody

Re: Inquiry into Tax and Superannuation Laws Amendment (Better Targeting the Income Tax Transparency Laws) Bill 2015

We refer to your letter of 10 September 2015 inviting submissions in relation to the Senate's *Inquiry into Tax and Superannuation Laws Amendment (Better Targeting the Income Tax Transparency Laws) Bill 2015* (the Bill).

Our views on the Bill are set out in our **attached** submission to Treasury dated 1 July 2015.

The Institute, along with its expert members, would be pleased to provide additional details on any of the matters set out in our submission, either in writing, by phone or in person.

If you would like to discuss the submission, please contact either me or Tax Counsel Thilini Wickramasuriya, on [REDACTED]

Yours sincerely

Stephen Healey
President



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1 July 2015

Mr Tom Reid
General Manager
Law Design Practice
The Treasury
Langton Crescent
PARKES ACT 2600

By email: taxlawdesign@treasury.gov.au

Dear Mr Reid,

Better targeting the income tax transparency laws

The Tax Institute welcomes the opportunity to make a submission to Treasury in relation to the *Tax and Superannuation Laws Amendment (Better Targeting the Income Tax Transparency Laws) Bill 2015* exposure draft legislation (**Exposure Draft**).

We support the carve-out of domestic private companies from the existing transparency law for the reasons set out below. The drafting of the Exposure Draft achieves its policy objective and we recommend the prompt passage of the draft legislation.

Private companies may not in practice be required to publicly disclose their financial information other than under the current tax transparency law. We support the reasoning for the carve-out of these companies from the law regarding privacy and commercial sensitivity. The current transparency law results in private companies having to publicly disclose information which can be used to determine their net profit margin. Such information can be highly sensitive for businesses and can impact on their business dealings. For example, the disclosure of this information in relation to a privately owned agricultural business supplying produce to large supermarket chains, may result in their significant customers using the information as leverage in commercial negotiations.

The public disclosure for the tax affairs of private companies risks disclosing the tax circumstances of the ultimate individual owners (via searches of the ASIC public registers). If this concern is not addressed, private companies may be encouraged to put in place nominee shareholding arrangements to conceal their interests in a private company. This in turn will result in reduced overall transparency in the public information as to corporate ownership available in ASIC records.

As paragraph 1.17 of the Explanatory Memorandum explains, for reasons such as the above, the disclosure of private company information could lead to the restructuring of the company's affairs to keep below the threshold. Tax laws which encourage the establishment of additional companies and complex structures to avoid disclosure add inefficiency to the tax system.

Public companies are more accustomed to disclosing financial affairs due to the strict requirements imposed on such companies under the corporations law. Such companies are better equipped to deal with public enquiries in relation to their financial affairs than private companies who would likely face significant additional costs in preparing to deal with such enquiries.

The transparency initiative is intended to better inform the public about the taxation of multinationals, including the nature and scope of base erosion and profit shifting: paragraph 1.13 of the Explanatory Memorandum. The exclusion of entities with an ultimate foreign parent company, or majority-owned by foreign shareholders, from the carve-out is appropriate in this context.

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If you would like to discuss any of the above, please contact either me or Tax Counsel Thilini Wickramasuriya, on [REDACTED].

Yours faithfully,

Stephen Healey
President