

Senate Economics Legislation Committee
Inquiry into Currency (Restrictions on the Use of Cash) Bill 2019

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

JANUARY 2020

Department/Agency: ATO

Question: 1

Topic: Large business tax transparency

Question:

Senator PATRICK: I'm going to ask you, on notice, to answer some questions. I'm sure you don't have the details here.

Mr Hardy: I don't expect I have adequate information here.

Senator PATRICK: Sure. Just to be very clear, I'm not going to ask for information about these taxpayers, because there are privacy laws which we generally respect. I want to know what the tax office has done in the cases of these companies that I'm going to name: you did an audit on this date, this date and this date, and you did this. I don't want to know the result of the audit; I want to know what you are doing in addition to simply receiving a tax return. Amcor Ltd, \$16 billion, in the manufacturing sector, with no tax paid over the last five years; BAE Systems, in the defence sector, with \$6 billion of revenue over five years and not a cent of corporate tax paid. I'll give you a few more from different sectors: ExxonMobil, \$42 billion of revenue—these are rounded down—with no corporate tax paid; Ford Motor Company, \$14 billion, in the transport sector, with no tax paid. There are a couple more: Vodafone Hutchison Australia, \$18 billion of revenue, in the communications sector, with no tax paid; Wilmar Australia Holdings Pty Ltd, \$8 billion in revenue over the last five tax transparency years, in the sugar industry, with no tax paid. I'd like you, on notice, to come back to the committee and say, for each of those companies I've named, 'We've looked at these companies in these ways over those five years.' To be very clear, I'm not asking for the results of that information; I want to know what you, the tax office, have done in respect of that tax revenue that has not been collected.

Mr Hardy: We are certainly happy to help with that. I think possibly even the confirmation of particular taxation interaction with any of those entities, of itself, is a potential breach of the secrecy provisions.

Senator PATRICK: I actually regard it as a very important oversight process. The tax commissioner and I have run up against each other. If I need to take to the Senate chamber to get an order and twist the government's arm, I will. I don't mind if you return that information to the committee in confidence. It's a government controlled committee. I'd hope that that sort of information is not breaching any privacy laws.

Mr Hardy: We will do absolutely everything we can to satisfy your question.

Answer:

Note: The response to the QoN as expressed above has been expanded as a result of discussions between Senator Patrick and ATO Assistant Commissioner Michael Hardy on 30 January 2020. The response includes additional entities, BlueScope Steel Limited, Chevron Australia Holdings Pty Ltd, CITIC Resources Australia Pty Ltd, Emirates Airline, Lendlease Corporation Ltd and Virgin Australia Holdings Limited, as requested by Senator Patrick.

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Information on specific companies

An important feature of the Australian tax system is that the details of income earned and taxes paid by taxpayers, both people and entities, are kept confidential. This means the ATO cannot comment on the tax affairs of any individual or entity due to our obligations under the taxation secrecy laws including whether they have been the subject to reviews or audits.

Since 1 July 2016, additional funding and resources provided under the Tax Avoidance Taskforce (Taskforce) have enabled us to expand our direct engagement with the largest companies operating in Australia. We have a robust compliance program under the Taskforce, with specialist tax teams engaging directly with large multinationals to ensure they meet their obligations.

As part of the Taskforce, all large public and multinational companies with total income of greater than \$250m are reviewed under our Top 100 and Top 1000 programs.

Since the inception of the Taskforce, we can confirm that:

- > we have comprehensively reviewed 100% of the corporate groups in the Top 100 program, and
- > we have reviewed 660 taxpayers under the Top 1000 program and a further 250 are either currently under review or have been notified that we will undertake a review (typically reviews will commence within four months of notification).

A number of the entities identified have publicly disclosed their engagement with the ATO, for example:

- > *Bluescope Steel* – “has its own dedicated large taxpayer case team and is subject to ongoing and regular engagement with the ATO through the Pre-Lodgment Compliance Review (PCR) process in relation to income tax and GST”¹
- > *Chevron Australia* – “the spectrum of our engagement with the ATO ranges from compliance reviews, audits and disputes”²
- > *ExxonMobil* – “we have an open and ongoing dialogue with the ATO”³ and “following a review of financing structures and related party loan pricing, on 3rd April 2018 the Australian Taxation Office (ATO) issued amended assessment to ExxonMobil Australia Pty Ltd for the 2010 and 2011 income years, which may also have implications for the 2012 to 2017 income years”⁴
- > *Lendlease Corporation* – “the ATO has rated Lendlease as a key taxpayer under its risk-differentiation framework”⁵
- > *Vodafone Hutchinson* – “in prior years, a pre lodgement compliance review of our income tax return has been traditionally undertaken by the ATO”⁶

¹ Bluescope Steel, *Tax Contribution Report Financial Year ended 30 June 2019*, p6

² Chevron Australia Holdings, *fact sheet economic contribution report for year ended 31 December 2018*, p3

³ ExxonMobil Australia, *ExxonMobil Australia Tax Facts*, p3

⁴ ExxonMobil Australia, *Annual Report for the period ended 31 December 2017*, p3

⁵ Lendlease Corporation, *Tax Report 2019*, p4

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ATO success in holding multinationals to account

We have had significant recent success in positively changing the behaviour of multinationals and increasing the amount of tax they pay in Australia. The recent report of the Australian National Audit Office recognised that since the commencement of the Taskforce, there has been a significant increase in compliance revenue of large multinationals.

There have been a number of high profile settlements as a result of taskforce activities, most notably:

- > In November 2018, BHP Group Ltd announced that it had settled its longstanding marketing hub dispute with the ATO.⁷ The settlement included cash of \$529 million and profits of the marketing hub related to Australian sales being taxable in Australia.
- > In December 2019, Google announced that they have settled their tax dispute with the Australian Taxation Office (ATO) with a payment of an additional \$481.5 million on top of their previous tax payments.⁸ Google join the likes of Microsoft, Apple and Facebook who have all publicly stated that they have settled their tax affairs with the ATO bringing the increased collections made against taxpayers in the ecommerce industry to around \$1.25 billion.
- > In its 2017 annual report Chevron revealed it had settled its significant transfer pricing dispute with the ATO. The settlement related to the ATO's landmark win in the Full Federal Court. Revenue resulting from the decision and subsequent assessments was in excess of \$1billion.⁹

The introduction of the Multinational Anti-Avoidance Law (MAAL) (effective from 1 January 2016) has also achieved significant results for the Australian community. In response to the introduction of MAAL, companies have restructured their operations to book income in their Australian subsidiaries rather than bill from overseas. In the 2017–18 year, over \$7 billion was booked in these Australian subsidiaries, and much of this is directly reflected in the latest Corporate Tax Transparency (CTT) report. Profit from these activities is now being taxed in Australia and locked in for the future.

There will be no lessening of our efforts to hold multinationals to account. Additional funding provided to the ATO has enabled the Tax Avoidance Taskforce to be extended to 30 June 2024 and expanded to cover even more large companies.

Increased transparency by multinationals

We published the fifth CTT in December 2019. Over the five years where CTT reports have been published, all industry segments reported growth in the number of reporting companies, total income, taxable income and tax payable. The reported data also shows that the proportion of large companies paying no tax continues to decline.

⁶ Vodafone Hutchison Australia Pty Ltd, Board of Taxation – Tax Transparency Code Report for the financial year ended 31 December 2017, p9

⁷ BHP 2018, *BHP settles longstanding transfer pricing dispute*, media release, 19 November 2018

⁸ Australian Taxation Office 2019, *ATO nets another e-commerce victory*, media release, Canberra 18 December 2019

⁹ Chevron Corporation (2017), *Chevron Corporation Annual Report 2017*, p59

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It is important to remember that corporate income tax is payable on profits, not gross income. A number of companies in the CTT report continue to make losses each year, for both accounting and tax purposes, although this number is reducing.

There are a number of reasons why a company may make losses for example they may have substantial operations in start-up phase. Companies are also able to carry forward losses to offset tax payable in the future. A company that makes a big loss in a year will not pay tax in future years until the loss is fully recouped. This is reflected in the report, with some high-profile companies paying tax again after a number of years of not paying tax.

The ATO also encourage large corporates and multinationals to sign up to the Board of Tax's Voluntary Tax Transparency Code (VTTC). As at 31 January 2020, there were 168 corporates who had signed up and made their reports publicly available.

Some of the entities identified in this QoN have voluntarily prepared and lodged reports through the VTTC between 2016 and 2019. Information disclosed within these reports is consistent with the reasons for disclosing nil tax payable that are provided in the CTT reports.

Publicly available information

| Company | VTTC report | Financial Statements and Other |
|---------------------------------------|--|---|
| BlueScope Steel Limited | Tax contribution report (2019) | 2018/2019 Annual Report |
| Chevron Australia Holdings Pty Ltd | Tax transparency fact sheet | 2017 Annual Report |
| ExxonMobil Australia Pty Ltd | Tax Facts | 2018 Digital Annual Report |
| Lendlease Corporation Ltd | Tax Report 2019 | 2019 Annual Report |
| Vodafone Hutchinson Australia Pty Ltd | Tax Transparency Code | Vodafone Group Plc – Annual Report 2019 |

Other information

| | |
|--------------------------------|---|
| Tax and Corporate Australia | https://www.ato.gov.au/General/Tax-and-Corporate-Australia/ |
| BHP settlement announcement | https://www.bhp.com/media-and-insights/news-releases/2018/11/bhp-settles-longstanding-transfer-pricing-dispute/ |
| Google settlement announcement | https://www.ato.gov.au/Media-centre/Media-releases/ATO-nets-another-e-commerce-victory/ |

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***Note:** The table below outlines the complete list of entities which were identified by Senator Patrick.

| Complete list of entities |
|---------------------------------------|
| Amcor Ltd |
| BAE Systems |
| BlueScope Steel Limited |
| Chevron Australia Holdings Pty Ltd |
| CITIC Resources Australia Pty Ltd |
| Emirates Airline |
| ExxonMobil Australia Pty Ltd |
| Ford Motor Company |
| Lendlease Corporation Ltd |
| Virgin Australia Holdings Limited |
| Vodafone Hutchinson Australia Pty Ltd |
| Wilmar Australia Holdings Pty Ltd |