



Community and Public Sector Union

Michael Tull – Assistant National Secretary

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Senate Standing Committees on Economics
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Dear Committee Secretary

Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015 [Provisions]

The CPSU welcomes the opportunity to make a submission to this inquiry into the provisions of the Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015. As the key union representing Australian Public Service (APS) employees and the primary union covering workers in the Australian Taxation Office (ATO), our submission draws directly from the experiences and views of CPSU delegates at the ATO.

The CPSU believes that government has a crucial role to play in the nation. It is our view that, at present, the government does not collect sufficient revenue to meet the needs of the Australian people and that tax avoidance is a major problem and not just amongst large multinational corporations.

A good start but more must be done

CPSU members at the ATO have serious concerns about the adequacy of Australia's current tax legislation. Many members have informed the CPSU that the international use of tax havens by Australian and foreign owned companies (operating in Australia) are a challenge that the ATO struggles with. Transfer pricing, profit shifting and the use of multiple trust structures are amongst the most prevalent forms of tax avoidance.

CPSU members believe that the Commonwealth's proposed multinational tax avoidance package is a good start. The measures attacks a particular avoidance technique known as the *direct sales model* where foreign subsidiaries in Australia deal with Australian customers but contracts are signed in the name of the foreign entity so that income does not fall under the Australian taxing net. The foreign subsidiary in Australia is said to be providing services on behalf of the foreign entity and for this it receives its costs back plus a small mark up. Members indicated that this technique is seen in the IT industry but it does not just apply to IT companies

While the CPSU welcomes action by the Government to address corporate tax avoidance, the measures do not go far enough in tackling tax avoidance and there is some concern the measures proposed may not be effective when implemented. It is difficult to assess the effectiveness with the limited information provided and other factors will have an impact.

Greater transparency is required

ATO members strongly believe that greater transparency is essential if Australia wants to tackle multinational tax avoidance. CPSU members say that increased transparency is important or very important in combating corporate tax avoidance.

While legislating country-by-country reporting is essential, a greater level of transparency is required. In terms of transparency, only tax authorities will see the information in country-by-country reporting. The Board of Taxation is looking at a voluntary transparency code for Australia, however, it would be useful if the general public saw some of the key international numbers as well as overall income and tax numbers.

The principle purpose test

One of the key measures in this package is the lowering of the threshold of the test to cancel tax benefits. The test would no longer require the avoidance to be the 'sole or dominant purpose' but one of the 'principal purposes'. CPSU members are supportive of this change, one member commenting that:

The 'sole or dominant purpose' test has been difficult to prove and has allowed many corporations to evade tax. This situation leads to a risk adverse environment, when there is so much doubt about getting a successful litigation outcome, and therefore cases are dropped completely or settled for low amounts.

There was, however, concern amongst some members that the ATO might find it difficult to implement the new 'principle purpose' test as proving it, especially in the context of a lot of the information being offshore, may be problematic.

Significant global entities

The proposed Bill creates a new definition of 'significant global entities' with \$1 billion turnover in global revenue being the threshold. The CPSU is concerned that this threshold may be too high; particularly as a big concern of ATO members is that the practice of corporate tax avoidance is becoming widespread and is almost an accepted practice.

Closing other loopholes that emerge

CPSU members have expressed an expectation that there may be a range of new tax avoidance techniques that are adopted in response to the Commonwealth's package. One member suggested that:

Companies may restructure as a result of the pending legislation and entities will then be assessed on the income from sales to Australian customers; corporate tax avoidance still remains through transfer pricing techniques but this is more manageable (under Division 815).

The Government should be ready to respond to these new techniques that corporations may use and close any other loopholes that may emerge if the Bill passes.

OECD BEPS package provides guidance but is limited

The OECD has recently released its global package to fight base erosion and profit shifting (BEPS), consisting of 15 measures including fine tuning of existing transfer-pricing rules,

mandatory disclosure by taxpayers of their “aggressive tax planning arrangement”, limitations on firms’ ability to “treaty shop” for the lowest tax rates, and standardising interest deductions within multinational firms.¹

While the CPSU supports using the OECD package as guidance to tackle loopholes in Australia’s tax system, the package should only be seen as a first step. The European Network on Debt and Development has highlighted that under the BEPS package some companies currently avoiding taxes will be able to keep their current tax arrangements until 2021 and the new system will still have loopholes. The package will not ensure that multinational corporations pay their taxes ‘where economic activities take place and value is created’.² Much more will need to be done and Australia should play a leading role in discussions after BEPS to ensure there is stronger global action on multinational tax avoidance.

Staffing and resourcing

CPSU members are adamant that previous budget and staffing cuts will affect the implementation of these multinational tax avoidance measures. Between the 2013 election and the end of 2016-17, the ATO is forecast to lose 4,700 employees or nearly a quarter of its workforce over two years.³ A loss of this magnitude inevitably has an impact on the work that ATO employees can carry out. Members strongly expressed that current levels of resourcing and staffing are inadequate:

In terms of staffing, Internationals in Public Groups & International (PG&I) has been recruiting staff so there is a small increase for this area and for PG&I overall (maybe about 60 extra). But the ATO including PG&I staff are still struggling from the loss of the 4,400; so any extra workload plus the imminent loss of at least 260 EL staff (though I understand very few from PG&I) will definitely put a strain on the system.

What resourcing? We can't do the current priorities now, so we will just drop some of the less high profile ones

We don't have enough people let alone skilled people.

ATO capacity was severely damaged when 3000+ staff were cut in 2014. We saw an immediate impact on the ability to deliver effective compliance. For example, the threshold for when we would pursue a taxpayer increased. Individuals with simple tax arrangements are still being pursued for \$300; this is an example of the extreme inequity I see. We will settle with a multinational for 20% of their tax liability, but when it comes to a mum and dad business who stuffed up and will lose their home if they can't pay \$200,000 - we refuse to reduce the amount they need to pay. Also, it doesn't help when a strong case against the BHP Chair is at the door of the court and the Commissioner intervenes and says to drop it. This is very dispiriting for case officers and in house lawyers and detracts from their sense of loyalty and value.

Members at the ATO work hard and are proud of the job they do, but there are limits to what they can achieve with shrinking resources and fewer staff. If the Commonwealth is serious

1 A White, ‘OECD ups pressure on domestic tax reform’, *The Australian*, 7 October 2015, viewed 9 October 2015
<http://www.theaustralian.com.au/business/oecd-ups-pressure-on-domestic-tax-reform/story-e6frq8zx-1227559618462>

2 T Ryding, ‘An assessment of the G20/ OECD BEPS outcomes: Failing to reach its objectives’, European Network on Debt and Development, 2 October 2015, viewed 12 October 2015, <http://www.eurodad.org/BEPSFacts>

3 P Thomson, ‘Australian Taxation Office slashes 4700 staff, brings in \$250,000-a-year spin doctor’, *Sydney Morning Herald*, 25 November 2014, viewed 9 October 2015, <http://www.smh.com.au/national/public-service/australian-taxation-office-slashes-4700-staff-brings-in-250000ayear-spin-doctor-20141125-11st9m.html>

about tackling multinational tax avoidance, the ATO will require significantly higher levels of staffing and resourcing.

For further information please contact Dr Kristin van Barneveld, Director of Research via email or

Yours sincerely

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