

A short and definitive submission to the Senate Inquiry into Corporate Tax Avoidance

Mark Lyons

SMSF Trustee and Private Investor

In regards to the Senate Inquiry into Corporate Tax Avoidance, Senator Milne's motion 465 in support of the erroneous Tax Justice Network Report and the whole misdirected basis for the Senate Inquiry.

Point 1: ASX Listed Trusts Are Not Subject To Company Tax, This Is Not An Opportunity For Hiding Taxable Income Offshore As We Have Foreign Withholding Tax On These Payments

The major supposed cheats on the ASX 200 in the Tax Justice Network report by number were listed Managed Investment Trusts, mainly Property. Labor and Senator Milne in my opinion must know this to be a fabrication as they must have read the following report to the Labor Government of the time, Principle 1.9 shows the knowing, particularly given Chris Bowen was Assistant Treasurer when the report would have been originally commissioned,

"Board Of Taxation Review Report 2009

REVIEW OF THE TAX ARRANGEMENTS APPLYING TO MANAGED INVESTMENT TRUSTS

A report to the Assistant Treasurer

Policy Principle 1.9 The tax treatment for trust beneficiaries who derive income from the trust should largely replicate the tax treatment for taxpayers as if they had derived the income directly. "

[http://www.taxboard.gov.au/content/reviews\\_and\\_consultations/managed\\_investment\\_trusts/report/managed\\_investment\\_trusts\\_discussion\\_paper\\_report.pdf](http://www.taxboard.gov.au/content/reviews_and_consultations/managed_investment_trusts/report/managed_investment_trusts_discussion_paper_report.pdf)

As to the erroneous question as to whether foreign domiciled investors in Australian Managed listed trusts can avoid taxation, this is a complete lack of understanding of withholding tax in Australia which is 30% for foreign investors in non double tax agreement countries for unfranked dividends which managed listed trusts are, and 15% for countries with double tax sharing agreements. For the full information read the following, again Labor are more than aware of all this and are playing dumb,

<https://www.ato.gov.au/individuals/international-tax-for-individuals/in-detail/australian-income-of-foreign-residents/payg-withholding-from-interest,-dividends-and-royalties-paid-to-non-residents/>

<https://www.ato.gov.au/Individuals/International-tax-for-individuals/In-detail/International-agreements/International-tax-agreements/>

<https://www.ato.gov.au/Individuals/International-tax-for-individuals/In-detail/Australian-income-of-foreign-residents/Taxation-of-trust-net-income---non-resident-beneficiaries--General-overview-of-the-changes/>

It is also worth noting that every Australian, I repeat every Australian is an investor in a Trust, because every Superannuation fund in Australia, I repeat every superannuation fund in Australia is a Trust and according to the Tax Justice Network, the Greens and Senator Milne therefore every Australian is a tax cheat.

If you know what you're meant to be inquiring into, then you'll know why Principle 1.9 of this Labor commissioned report to Treasury in 2009 proves that the Tax Justice Network Report, Senator Milne's Motion 465 and the whole basis for the The Senate Corporate Tax Avoidance Inquiry is fallacious. It is indeed unfortunate as getting Google, Apple etc to pay tax on profits in this country is probably now going to be impossible because of the misinformation and farce from the Greens and their knowing accomplices the Labor party who knew all along based on the report to Treasury what the laws were, and why, and the principle recommendations of their own report.

Point 2: The Inquiry Was Brought Incorrectly Based On An Obviously Erroneous And Inept Tax Justice Network Report

Together with the errors from ignorance of Point 1, I believe Senator Milne in calling for this erroneously based inquiry did not even fully read the Tax Justice Network full report, pages 67 onwards have such glaring errors as a company paying -220%, many paying negative average tax rates and 23 out of the ASX 200 paying effective company tax rates of 31 up to a staggering 63%. This should have raised suspicions of the incorrectness of this report to the reasonable reader.

It is also worth noting that in discussion with United Voice a major sponsor of this report they admitted to me in a personal conversation that they had talked to Suncorp who were initially reported as 19% and after discussion with Suncorp had to admit to an error and that Suncorp's actual figure was 30%.

A further point worth noting is that our top ten ASX listed companies namely, CBA, NAB, WBC, ANZ, BHP, RIO, WES, WOW, TLS, WPL all even according to the erroneous and obviously biased Tax Justice Report, all these top 10 ASX listed companies were reported as having ETR of between 27 and 30% and average of 28.5%, well above the Fairfax ETR of 25% who have constantly reported the story and grandstanded their own virtue.

It is further worth noting that the ASX 10 make up about 50% of the whole ASX and make about 50% of the profits of the whole ASX and therefore pay about 50% of the tax of the whole ASX. This is worth noting for two reasons. 1, at least 50% of the company tax on the whole ASX was reported as being paid at 28.5%, even by the biased and erroneous Tax Justice Network. 2, if the top 10 Australian companies in Australia don't use their massive resources to dodge tax to any real extent then why are much smaller companies able to find the money and resources to do this reported dodging? Answer, they don't, the report is erroneous and inept and Senator Milne's motion 465 is a baseless motion for this Inquiry.

Another whopper that a company, namely NWS that has a market capitalisation of a few hundred million on the ASX that puts it at 191 on the ASX 200 a mere 1/300th the size of

CBA and does most of its business in the US is somehow the biggest tax ower, owing over a billion per annum to the Australian government is so obviously biased and flawed that you have to start wondering where this frivolously based Senate Inquiry war is going next? Maybe a Senate Inquiry into why everyone in Australia is a tax cheat because they have more money than the Greens and Labor want them to have in a particular asset investment class? If that's the case try largely untaxed residential property, it's worth 5 billion, 3.5 times the 1.5 billion of the whole ASX.

Personally, I couldn't care less about this politically and selfishly motivated battle between Murdoch, Fairfax, the ABC Greens and Labor who all hate Murdoch, and I wouldn't normally mention it, but as this is what it has all degraded into, I say, come on, using this as a basis to destroy the reputation or all our Australian companies and faith in our taxation system, it's abhorrent.

Point 3: Why Did Paul Keating, Peter Costello and Wayne Swan Get Taxing Australian Companies So Wrong And Why Did Wayne Swan Let Them All Off For 6 Years Even With A Greens Labor Controlled Senate?

Well really, does anyone have to have this rhetorical question answered, Senator Milne, the Greens and the Labor Party are incorrect in calling for this Inquiry on the erroneous grounds used.

Point 4: Australian Companies Pay The Second Highest Rate Of Corporate Taxation Reported By The OECD In The World

[http://www.oecd-ilibrary.org/taxation/taxes-on-corporate-income\\_20758510-table5](http://www.oecd-ilibrary.org/taxation/taxes-on-corporate-income_20758510-table5)

Point 5: Australian Corporates Pay 47% Of Profits In Tax And 100% Of All ASX Company Profits Is Only About 10% Of Government Spending Per Annum  
Ironically this doesn't even include the taxation of Managed Investment Trusts which would make Australia's figure much higher, refer to Point 1.

<http://data.worldbank.org/indicator/IC.TAX.TOTL.CP.ZS>

This figure correlates to the budget listed take of mid 70 billions and only about 80 billion being available to all shareholders of all listed companies combined. Ironically this doesn't even include the taxation of Managed Investment Trusts which would make Australia's figure much higher, refer to Point 1.

Error, after error, after lack of understanding, after beat up, after lack of knowledge, after total fabricated error, this is what this inquiry is based on, a very unfortunate situation given that it completely destroys the chances for a serious discussion on how to tax companies like Google and Apple and Microsoft and Ford and Holden and Toyota and HSBC and Citi, Chevron and McDonalds and so on, on the profits they make in this country.

Point 6 This Inquiry Should Be Reconvened On A Motion That Explicitly Denounces And Excludes The Influence Of Senator Milne's Motion 465 And The Erroneous Tax Justice Network Report

On the basis of the facts of Points 1 to 5 this Senate Inquiry should be immediately brought to an end and terminated before it does great damage to the Australian people. An Inquiry

should be reconvened only with bipartisan support on terms and motions that explicitly denounce and exclude the influences of Senator Milne's Motion 465 and the erroneous and inept Tax Justice Network Report.

Mark Lyons  
SMSF Trustee and Private Investor