Submission to

The Senate Economics

References Committee

Inquiry into Corporate Tax Avoidance

February, 2015

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If you ask the CEO of some major corporation what he does he will say, in all honesty, that he is slaving 20 hours a day to provide his customers with the best goods or services he can and creating the best possible working conditions for his employees. But then you take a look at what the corporation does, the effect of its legal structure, the vast inequalities in pay and conditions, and you see the reality is something far different."

Noam Chomsky

Introduction

The Queensland Nurses' Union (QNU) thanks the Senate Economics References Committee (the Committee) for the opportunity to make a submission on corporate tax avoidance.

Nurses[1] are the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNU is the principal health union in Queensland covering all categories of workers that make up the nursing workforce including registered nurses (RN), registered midwives, enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 50,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses in Queensland are members of the QNU.

The QNU strongly supports tax reform in Australia to fund public health and aged care services properly. One mechanism for achieving this is to consider new methods of taxation that will increase revenue without unduly impacting on ordinary Australians. Our submission addresses the Committee's terms of reference and puts forward a proposal for a new tax on the trading of financial instruments such as stocks, bonds and derivatives to target the large profits made on risky, high-volume trading.

It is timely that the Senate Economics References Committee is also conducting an inquiry into privatisation of State and Territory Assets and New Infrastructure. We suggest that there is common ground between the two inquiries where effective corporate tax rates and a modest levy on financial transactions could fund new infrastructure rather than selling off government-owned assets.

[1] Throughout this submission the terms 'nurse' and 'nursing' are taken to include 'midwife' and 'midwifery' and refer to all levels of nursing and midwifery including RNs, Midwives, ENs and AINs.

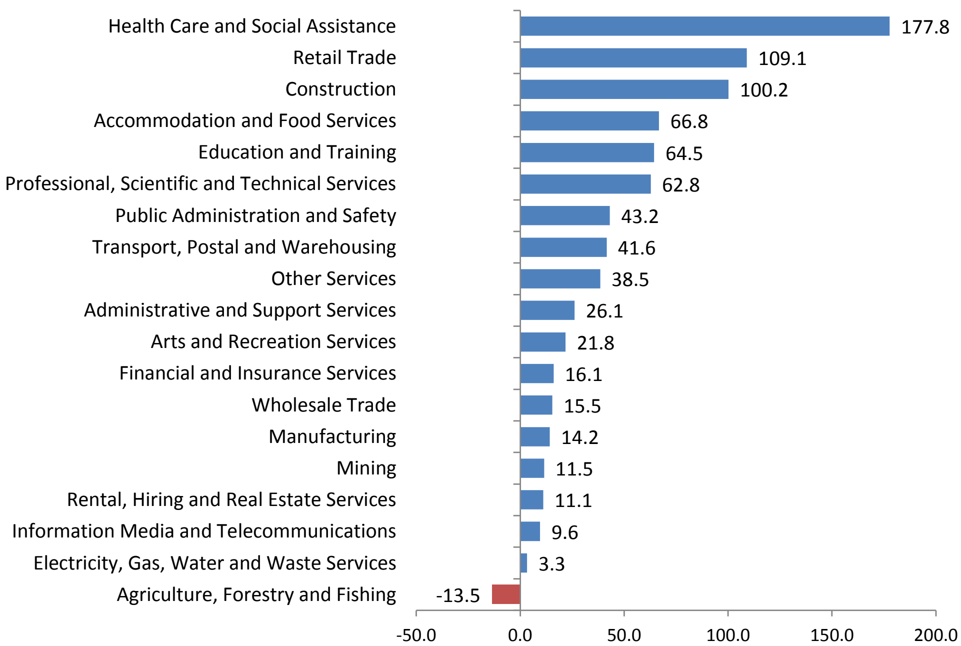
The Adequacy of Australia's current laws

In our view, there is scope to review Australia's current corporate tax laws and this should occur within the context of budget settings. A major weakness in the 2014 budget was the lack of focus on ways to increase government revenue. Government revenues should be set at a rate that allows the government to do its job properly and transfer resources into employment generating and service delivery areas like health and social services.

For good reason, these areas will continue as two of the biggest employment growth sectors over the coming years. It is perfectly sound, as a lot of other industries use technological improvements to reduce employment numbers while still enjoying reasonable incomes, that taxation should be used to shift some of that income to the areas of healthcare, education and social services. A review of the corporate tax laws is one way of investigating other means of raising revenue to fund these services.

The following graph indicates projected employment growth by industry to 2017 where health care and social assistance are set to rise significantly in the next few years.

Projected employment growth by industry – five years to November 2017 ('000s)



Source: Department of Employment, Education and Workplace Relations (2013) Employment Outlook to 2017

Creighton and Crowe (2014) refer to the work of several respected Australian economists to argue that the "nation's jobs market will become increasingly reliant on taxpayers during the next five years as mining and manufacturing shed staff to make way for an army of health, education and welfare workers." These prominent economists are confirming the trends in official statistics over a number of years that the nature and areas of employment are changing and, in some cases, significantly. These trends emerge as societies and technology progress.

According to Rafferty and Wu (2010, p.5) “technologies have produced dramatic reductions in communication, computer processing and transport cost; and less labour is now needed to produce agricultural, mining and manufacturing output.” These observations are further confirmation that governments need to refocus urgently on the revenue and industry growth aspects of the economic and public finances’ debate. This includes corporations paying their fair share of taxes.

The private sector might help create wealth – government run industries can create wealth too – but if revenue is not increased through taxation, the private sector’s contribution is of reduced value to the wider community.

The QNU believes that the federal government should levy taxes in a way that supports equity as well as economic growth. By increasing the range and rate of various financial, investment and other business taxes, rather than continuing to shift the burden onto working people through an increased and expanded Goods and Services Tax (GST) and State income taxes, Australian governments can both add to their income and achieve a fairer taxation system.

The federal government should put its energy into growing the economy, industry and, as a consequence, national and State taxation income, rather than focusing on cost cutting and reducing its role in the provision of essential services.

There are also various tax options, targeting financial speculators and other business and investment distortions, which could help seal the current revenue shortfall. A review of some of the taxation reductions for high value, self-managed superannuation funds would be a useful start.

The Australian government should also cooperate fully with international efforts, including through the G20 and other forums, to reduce tax avoidance, especially by large corporations, and close down tax havens. These are fairer policy options the QNU will continue to pursue in its dealings with governments.

As a case in point, the QNU believes that for reasons of equity and social justice Australia should introduce a financial transactions tax.

Case study - financial transactions tax

In recent years the tax burden has increasingly fallen on families while corporate and financial taxes have been reduced ostensibly for reasons of efficiency and job creation.

This narrowing of the tax base has created a significant squeeze on government revenues and the capacity of governments to continue to provide high quality public services. It has also increased the cost of living for most people, seen a spreading of user pays charges for basic public services and a drive to hold down wage rates in key public service areas such as health, aged care and community services.

Since the announcement of the 2014 federal budget the debate about increasing the GST and expanding its coverage has again erupted.

The QNU believes that instead of disadvantaging Australians again through tight budget measures, it is time the federal government took and redistributed a larger share from those involved in the billions of dollars in financial transactions, much of it speculative and of little productive value.

The financial transactions tax is a modest levy of up to 0.05% on the trading of specific financial instruments such as stocks, bonds, derivatives, futures, options and credit default swaps. It is sometimes referred to as the ‘Robin Hood Tax’.

Each time one of these financial products is traded, the levy applies. The tax targets the large profits made on risky, high-volume trading rather than the everyday transactions made by the general population.

High-volume trading, trades in collateral debt obligations and other risky financial instruments, including derivatives by hedge funds and major financial institutions were a key contributor to the global financial crisis in 2007. The financial transactions tax prompts the major banks and investment funds to pay a levy on trades that sometimes occur at a rate of thousands per second. A 0.05% fee equates to 5 cents in every $100 being traded.

In 2011, 1000 economists from 53 countries wrote an open letter to the G20 Finance Ministers meeting in Washington urging for a Robin Hood tax to be introduced. They wrote:

> *The financial crisis has shown us the dangers of unregulated finance, and the link between the financial sector and society has been broken. It is time to fix this link*

and for the financial sector to give something back to society. Even at very low rates of 0.05% or less, this tax could raise hundreds of billions of dollars annually and calm excessive speculation.

Taxation regimes around the world have not kept pace with development in markets, and it is clear that the time is right for the introduction of a financial transaction tax (Buckley, 2011).

Recommendation

The QNU calls on the federal government to implement a financial transactions tax at rates of around 0.05% (5 cents for every $100 being traded).

The Need for Greater Transparency to Deter Tax Avoidance and Provide Assurance that all companies are complying fully with Australia's tax laws

Taxation is an area of government activity where conflicts of interest abound making reform of the sector not only complicated but politically risky. For example, the federal government has a potential conflict of interest between its role as investor in the Future Fund and its various tax havens designed to avoid paying tax in other countries and its role as the tax collector to finance the nation. The doctrine of 'sovereign immunity' whereby the state cannot commit a legal wrong and is thus immune from criminal prosecution is a valid argument, but one that fails to acknowledge that a sovereign state should adopt the highest standards of corporate behaviour so that others follow (West, 2014).

The actions of government and industry in respect to tax avoidance give scant enthusiasm to the average Australian tax payer who continues to fund the nation. Even more confronting is that the response by big business to fix the nation's debt is to cut real wages and conditions for workers and increase the Goods and Services Tax (GST).

If corporations and business can legitimately minimise their taxation payments then there is no reason why they would voluntarily offer to pay more. The taxation regime for corporations needs to be transparent, consistent and enforced. This includes increased transparency on the purpose and function of subsidiaries of multi-national corporations in secrecy jurisdictions and greater reporting of revenue, profits, staff levels and taxes paid in each tax jurisdiction. However, we note that rather than seek a fairer taxation system where multinational corporations pay a fair share of tax (the same as their own employees), big business and this federal government advocate cuts real wages and/or increasing the GST.

United Voice, a trade union covering a range of industries and occupations and the Tax Justice Network Australia recently released a report on the tax practices of Australia's 200 largest Australian Stock Exchange-listed companies (the ASX 200). The report examined effective corporate tax rates over the last decade. This was the first comprehensive review of long-term corporate tax in Australia.

Using publicly available data, this study found that overall, the effective tax rate of ASX 200 companies over the last decade is 23%, below the statutory rate of 30%. If the ASX 200 companies had paid at the statutory rate it would have produced an additional $8.4 billion in annual revenues. Within the ASX 200 companies:

- nearly one third have an average effective tax rate of 10% or less;
- 57% disclose having subsidiaries in secrecy jurisdictions; and
- 60% report debt levels in excess of 75%, which may artificially reduce taxable profits.

The practices of Australian multinationals can have global implications. The amount of tax revenue lost in developing countries due to multinational corporate tax avoidance far exceeds all global spending on foreign aid.

It therefore makes sense for the Australian government to change domestic laws to mandate transparency and disclosure and increase enforcement so that corporations are accountable for paying a fairer share of tax.

The report recognises that there are valid business reasons to have subsidiaries in certain secrecy jurisdictions, such as Singapore or Hong Kong, where business may be conducted. Nonetheless, ASX 200 companies have hundreds of subsidiaries registered in secrecy jurisdictions. ASX 200 companies should therefore increase their transparency and provide valid reasons why they have located these subsidiaries in secrecy jurisdictions rather than others. Choosing to set up companies in a secrecy jurisdiction can reward those jurisdictions for maintaining laws that facilitate tax evasion, money laundering and tax avoidance. Using secrecy jurisdictions can also undermine corporate transparency and accountability more broadly (United Voice & Australian Tax Justice Network, 2014).

The report also notes the present limitations of disclosure amongst ASX 200 companies, which makes genuine comparisons across all companies difficult. Some companies maintain greater levels of transparency and report the vast majority of their subsidiaries, including those registered in secrecy jurisdictions. Many other companies, however, choose only to disclose a list of 'principal subsidiaries' that are deemed of material importance. The lack of standardised transparency across the ASX 200 may obscure the corporate tax practices of some of Australia's largest companies (United Voice & Australian Tax Justice Network, 2014).

Recommendations

The QNU supports the recommendations of United Voice and the Tax Justice Network that the Australian Government should:

- Require large corporations to provide more public disclosure and transparency.
- Increase fines for tax evasion and extend laws to effectively cover the full range of corporate tax avoidance strategies.
- Eliminate or restrict the use of stapled securities for tax arbitrage, according to global norms.
- Ensure that the Australian Tax Office is adequately funded and staffed.
- Support the OECD's Action Plan on Base Erosion and Profit Shifting and pressure secrecy jurisdictions to end their status as such through effective cooperation with other governments to combat tax evasion, tax avoidance and money laundering.
- Support the automatic exchange of information on tax matters between tax authorities of different countries, with appropriate safeguards, and follow through on its commitment to implement automatic exchange of information on tax matters into Australian law.
- Require greater transparency from multinational corporations, including country-by-country reporting. Consolidated annual reports should include revenues, profits, staffing levels and taxes paid in each country in which they operate or have subsidiaries.

The Opportunities to Collaborate Internationally to Address the Problem

In November, 2014, leaders of many of the world's largest economies met for the G20 Leaders' Summit. These leaders resolved to finish in 2015 work on modernising international tax rules to address the issue of companies shifting profits and reducing government tax bases. Taxation is at the core of countries' sovereignty, but in recent years, multinational companies have avoided taxation in their home countries by pushing activities abroad to low or no tax jurisdictions.

Unfortunately, developing countries that rely heavily on corporate tax and are the hardest hit by avoidance are not directly represented in this forum.

In particular, the G20 discussed measures to combat Base Erosion and Profit Shifting (BEPS) by multinational corporations. BEPS schemes can be very complex but they have a simple aim - companies shift profits across borders to low or no-tax jurisdictions to avoid paying higher tax rates in the country where they make a profit. A number of multinational corporations have been accused of using these methods which are permissible within existing national laws.

In September, 2014, G20 finance ministers met in Cairns and committed to finalising the OECD's 15 point Action Plan to counter BEPS by 2015. The OECD plan identifies a series of domestic and international actions to address the problem and sets timelines for the implementation (OECD, 2014). The Action Plan aims to provide governments with global solutions for addressing BEPS to create a more progressive international tax system that requires multinationals to pay their fair share of tax.

The BEPS process has led to positive outcomes, including for developing countries. In a big step forward for international tax transparency, in Cairns finance ministers agreed to a template for country-by-country reporting, which would see multinationals disclose sales, profits and taxes paid in all jurisdictions in their audited annual reports and tax returns.

The QNU supports these measures to increase transparency and disclosure.

The performance and capability of the Australian Taxation Office to investigate and launch litigation in the wake of drastic budget cuts to staffing numbers.

The ATO's operations are complex and diverse, managing over a billion direct transactions, collecting revenue in excess of $300 billion per annum and processing around 16.5 mill tax returns (Australian Tax Office, 2014). The 2014-15 federal budget announced savings of $142.8 million over three years from 2015–16 by reducing the ATO's resourcing (Australian Treasury, 2014). The ATO will also be subject to an efficiency dividend by bringing forward staff reductions that had been already planned in response to efficiency dividends and decisions of the previous government. The Government now plans to bring forward the reduction of staffing numbers that were due to occur in 2015–16 (1,600). A total reduction of 4,700 staff is planned between 2013–14 and 2017–18 (Australian Treasury, 2014).

During 2014, the ATO cut around 3000 positions, approximately 12% of its overall workforce with more to come as forecast. According to the Commissioner's 2014 *Annual Report* the cost of collection is about $0.91 cents per $100 of tax bought in. In other words for every dollar spent on a tax officer in salary and on-costs more than $100 is collected.

To save $300 or $400 million in wage costs over time the Commissioner of Taxation is possibly putting at risk one-eighth of the revenue – about $40 billion. Even if the marginal rate of return is ten to one rather than one hundred to one that is still a $4 billion gap in revenue for a saving of $400 million (Passant, 2014).

The ATO runs the systems that make it possible for 96 percent of voluntary taxpayers to pay their taxes. Without all of the ATO staff that voluntary flow would not continue and any job cuts would not only affect those pursuing tax avoiders but also those servicing complying taxpayers and the systems that make compliance easy for so many. The only way the job cuts could be cost effective is if those ATO staff leaving collected less revenue than they are paid in salary plus on-costs and that is not the case (Passant, 2014).

Staff cuts will do nothing to address major systemic issues like BEP and sophisticated offshore tax avoidance arrangements.

Rather than cutting 3000 staff, perhaps the ATO could have redeployed some of them to collect taxes specifically from those who avoid tax with such expertise. Instead, the federal government continues to rein in spending on health, education, social welfare, foreign aid etc. while making limited attempts to enforce proper payment of taxes from those sections of the economy that can afford it.

Weakening the capacity of the ATO to effectively tax big business will empower these organisations even more at the expense of the ordinary Australian.

The role and performance of the Australian Securities Investments Commission (ASIC) in working with corporations and supporting the ATO to protect public revenue

ASIC, the Australian Prudential Regulation Authority (APRA) and the Australian Competition and Consumer Commission (ACCC) are the principal regulatory agencies that implement government policy on corporate regulation. The Australian Transaction Reports and Analysis Centre (AUSTRAC) is responsible for regulating anti-money laundering and counter terrorism financing (AML/CTF) under the Attorney General's Department.

ASIC's regulatory responsibilities include ensuring market integrity in the financial services sector; supervising investment management; capital markets, corporations and their auditors and liquidators; and overseeing market operators. These duties form part of its broader mandate to supervise, facilitate and improve the performance of the financial system, and administer Commonwealth laws regarding corporations and businesses (Sanyal, 2014).

In the 2014–15 Budget, the federal government announced that funding for ASIC's operations will be reduced by $120.1 million over five years in order to match their new policy priorities (Australian Treasury, 2014).

Following some financial collapses in recent years and, in particular, instances of deceptive conduct in financial advice services, the Australian Parliament initiated an inquiry in 2013 to scrutinise ASIC's performance. The Senate Economics References Committee has already conducted five public hearings in 2014 to receive community feedback.

According to some, ASIC has several of the broadest responsibilities of any corporate regulator in the world. That includes major investigations, like the probe that led to the recent arrest of a former Bureau of Statistics employee and an ex-NAB trader over alleged insider trading (Nolan, 2014).

A reduction in operational funding may force ASIC to be more selective in the matters it investigates and then ultimately prosecutes. Its decisions could, in the long term, have an impact on confidence in capital markets if there is a perception that the corporate regulator is not adequately resourced to enforce the law.

As with the cuts to the ATO funding, the implications for reduced funding to ASIC will also impact on its ability to protect public revenue. The federal government clearly has a preference for self-regulation rather than a statutory regulatory authority. However, according to Professor A. J. Brown (cited in Nolan, 2014) Australia's finance sector already has a high level of self-regulation. It remains to be seen whether the cutbacks in ASIC are ideologically driven or a necessary reduction in the operating costs of government.

Conclusion

The QNU advocates for a fair taxation system, one where Australians, including corporations, pay their share. In our view, the financial transactions tax is a straightforward initiative that would increase revenue for essential services like health and education, rather than continuing to pursue GP co-payments and exorbitant university fees. Governments on both sides must listen to their constituents above and beyond big business interests. While some corporations avoid paying their reasonable share of tax yet simultaneously seek greater 'productivity' from the workforce, it is the everyday Australian who continues to prop up the economy in their capacity as workers and tax payers.

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