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Committee Secretary
Senate Economics References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

30 January 2015

Senate Inquiry into Corporate Tax Avoidance and Minimisation ("Senate Inquiry")
Submission by Mirvac Group ("Mirvac")

Dear Committee Members

Mirvac thanks you for the opportunity to provide comments to the Committee in relation to the Senate Inquiry into Corporate Tax Avoidance and Minimisation. In this submission we have provided you with a brief background of Mirvac's business operations and comments in the context of your terms of reference.

Mirvac has over 40 years of experience in the Australian property industry. Our vision is to set the standard as a world-class Australian property group. In pursuing this vision, Mirvac is governed by a stringent corporate governance framework that fosters a culture that values ethical behaviour, integrity and respect.

These corporate governance policies also reflect our approach to our tax reporting, compliance and payment obligations. Mirvac strives to be open and transparent in detailing our approach to tax to our securityholders, stakeholders and the public. We have provided our comments to the Committee in line with our governance framework and ethics.

Yours sincerely

Susan Lloyd-Hurwitz
CEO & Managing Director

Attachment

Mirvac Limited
ABN 92 003 280 699

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as responsible entity of the Mirvac Property Trust
ARSN 086 780 645

Mirvac Group Submission to the Senate Committee

30 January 2015

1. About Mirvac Group

The Mirvac Group ("**Mirvac**") was founded in 1972 and quickly established itself as a major part of the Australian property industry. The principal activities of Mirvac currently consist of real estate investment, development and investment management. Mirvac creates, and in some instances owns and manages, a diverse portfolio of assets across the office, retail, industrial and residential sectors.

Before 1999, Mirvac had a number of entities that had shares or units traded on the Australian Stock Exchange ("**ASX**"), including Mirvac Limited, Mirvac Property Trust, and Capital Property Trust. In 1999, the securityholders resolved to merge these entities by stapling the trust units and company shares and forming a Mirvac Group stapled security. The transactions were undertaken with the approval of a number of Australian government authorities including the Australian Securities and Investment Commission ("**ASIC**") and the Australian Taxation Office ("**ATO**")[1]. The current stapled security is traded on the ASX and consists of a unit in the Mirvac Property Trust and a share in Mirvac Limited.

Mirvac Limited operates the development business which comprises of both residential and commercial development. Mirvac Property Trust maintains an investment portfolio that invests in office, retail and industrial assets. The Mirvac Group is an Australian business operating principally in Australia; the group has negligible overseas operations or investments[2]. The Mirvac Group currently employs approximately 1,430 people in Australia.

The benefits of stapling to Mirvac included:

- Post stapling, Mirvac became a much larger organisation by market capitalisation on the ASX sitting just outside the ASX top 50 companies. This increased size created an increased level of interest from investors who only invest in large and liquid entities. This liquidity was considered to lower volatility in the Mirvac security price. In the 5 years following the creation of the stapled security our largest investors rose from 56% to 72% of our contributed capital.

- As Mirvac's capital base grew, it was expected that this would provide access to a lower cost of funding and enable the Group to be more competitive in large property transactions. It was also expected to provide greater funding flexibility through improved access to debt and equity markets.

From the securityholders' perspective, the stapled structure provides for the following:

- The securityholders receive both a stable return from the property investment aspects with the benefits of a focused growth return from development activities.

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[1] Advance Opinion obtained dated 1 April 1999

[2] Overseas operations and investments currently generate less than 0.2% total revenue of the Mirvac Group.

- The availability of the property trust structure enables investors to obtain returns from large scale property investments. In effect it creates a level playing field for property investments by opening up larger scale investments to smaller investors, and allowing larger investors a more diversified investment profile. In this context, it ensures that these investors should be treated and taxed in largely the same way as they would have been if they had invested directly in that property.

- For investors to obtain direct tax treatment via a property trust, the underlying policy requires that the property trust only engages in eligible business investment activities. Trading businesses cannot be carried out in a property trust. For this reason, property development and any other trading activities are carried out by Mirvac Limited. From a policy perspective, successive governments have sought to improve this regime. For example:

  - The Government of the time in 2008 sought to clarify the trading restriction by introducing safe harbour provisions.

  - This Government also introduced a new Managed Investment Trust (**"MIT"**) Regime in 2008/2009 which applies to property trusts. According to the budget papers for the 2008/2009 budget the new withholding tax regime furthers the Government's objectives to establish Australia as a financial services centre in the Asia Pacific region. According to the Assistant Treasurer at the time, the purpose of this regime was to provide lower withholding tax rates for certain foreign investors and attract foreign capital to Australia.

2. Mirvac's Recent Financial Performance

Mirvac's core businesses were heavily impacted during the Global Financial Crisis ("**GFC**"). Global economic conditions experienced rapid deterioration; there was a withdrawal of debt capital from lenders, falling asset values and a rapid decline in consumer confidence. As a result, during the period, the real estate markets were one of the hardest hit sectors. An example of the impact of the GFC is that Mirvac Limited wrote-down the value of its residential development inventory and business goodwill by in excess of $1 billion between FY2008/2009 and FY2012/2013.

As a result of the GFC, Mirvac Limited has had both tax and accounting losses in recent years. Mirvac Property Trust distributes its income such that all income tax is paid at the investor level. This explains why Mirvac Group has a low effective tax rate and is further explained at Section 3 below.

Since that time, trading conditions have been improving in line with improvements to the general economy, assisted by a strong resource sector, foreign investment and a low interest rate environment. Mirvac anticipates that this growth trend will continue, albeit at a more sustainable rate.

3. Mirvac's tax profile and effective tax rate

Overview

The Mirvac Group stapled security comprises one Mirvac Property Trust unit stapled to one Mirvac Limited share to create a single listed security traded on the ASX. However, the two entities remain separate legal entities in accordance with the Corporations Act 2001 and for tax purposes.

Mirvac Property Trust is taxed on a flow through basis rather than in its own right. This means that the unitholders of the Mirvac Property Trust pay tax on any distributions they receive.

Mirvac Limited has made significant economic losses as a result of the GFC and as a result has both tax and accounting losses. Absent those losses, Mirvac Limited would be operating with an average effective tax rate of circa 30%.

For the purposes of financial reporting, Mirvac Limited and its subsidiaries, and the Mirvac Property Trust prepare a single consolidated set of financial statements setting out, among other things, their combined accounting profit before tax and tax expense. However, for tax purposes, Mirvac Limited and its subsidiaries are treated differently to Mirvac Property Trust and need to be examined separately.

Mirvac Property Trust

The Mirvac Property Trust is an Australian MIT. Consistent with tax law, the Mirvac Property Trust does not pay income tax. Instead, tax on the income derived by the Mirvac Property Trust is paid by each of its unit holders.

Where distributions are made to non-residents, appropriate withholding tax at up to 30% is deducted by the trust and remitted to the ATO. This approach reflects the government's policy as set out above.

In respect of domestic unit holders, they will be subject to income tax at the applicable marginal tax rate (for example, up to 49% for individuals at the top marginal rate or 30% for corporate unit holders).

As noted above, such domestic investors are largely treated as if they had invested directly in the properties owned by Mirvac Property Trust.

Mirvac Limited

Mirvac Limited and its wholly owned subsidiaries have formed a tax consolidated group for tax purposes. This means that Mirvac Limited pays tax in respect of both its own activities and those of its wholly owned subsidiaries. Tax is paid at 30% on the taxable income within this part of the group.

At Appendix A we further detail the profit and loss profile of Mirvac.

4. Corporate and tax governance processes at Mirvac

Mirvac is committed to ensuring that its systems, procedures and practices reflect a high standard of corporate governance. The Directors believe that Mirvac's corporate governance framework is critical in maintaining high standards of corporate responsibility and fostering a culture that values ethical behaviour, integrity and respect. Mirvac is also committed to ensure key policies that form part of the corporate governance framework are readily transparent to both its stakeholders and the public, by publishing this information on our website.

These corporate governance principles also guide Mirvac's approach to its tax compliance, reporting and payment obligations. As part of its overall commitment to corporate governance, Mirvac maintains a rigorous tax corporate governance framework and policy.

Mirvac currently includes details of its tax expense in its financial statements. Mirvac management continues to consider ways to improve transparency regarding its tax affairs, including any relevant issues contributing to its corporate tax liability.

5. Relationship with the ATO

Consistent with Mirvac's tax corporate governance policy, Mirvac strives to be transparent in its engagement with the ATO. This may be through proactively managing its tax affairs in seeking certainty by way of rulings, or in addressing ATO inquiries promptly and in a fulsome manner.

In the last four years, Mirvac has sought three class rulings with respect to its capital reallocation project in the 2013 and 2014 income years, as well as the tax treatment of a scrip-for-scrip rollover in respect of the Mirvac Real Estate Investment Trust by the Mirvac Property Trust that occurred in 2010.[3]

Mirvac, like any large corporate group, has its income tax affairs regularly reviewed by the ATO. In the last 6 years, no adjustments have arisen from these reviews for income tax purposes.

6. Conclusion

Mirvac makes a substantial contribution to the property industry in Australia from the perspective of all stakeholders. Mirvac Limited has made significant economic losses as a result of the GFC and as a result has tax losses. But for these tax losses, the Mirvac Limited group would be operating with an average effective tax rate of approximately 30%.

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[3] CR 2014/9 Income Tax: Mirvac Group – capital reallocation (applicable to the period 1 July 2013 – 30 June 2014); CR 2013/49 Income Tax: Mirvac Group – capital reallocation (applicable to the period 1 July 2012 – 30 June 2013); CR 2010/22 Income Tax: scrip for scrip roll-over acquisition of units in Mirvac Real Estate Investment Trust by Mirvac Property Trust (applicable to period 1 July 2009 – 30 June 2010)

Appendix A: Profit breakdown between Mirvac Property Trust and Mirvac Limited

As indicated in the submission, Mirvac's businesses were negatively impacted by the GFC. We have detailed below a profit breakdown per year of Mirvac Property Trust and Mirvac Limited.

Table 1: Profit breakdown of Mirvac Property Trust for the period 2009-2014

Year ended 30 June	Profit / (loss) of Mirvac Property Trust ($ million)
2014	431.9
2013	458.4
2012	508.0
2011	498.8
2010	376.5
2009	(541.5)

As can be seen in Table 1 above, the Mirvac Property Trust was impacted by the GFC in the 2009 year. In this year there were considerable accounting revaluations and impairments. However, it recovered well after the 2009 year and has been profitable for the last five years, with distributions being paid to investors.

Table 2: Profit breakdown of Mirvac Limited for the period 2009-2014

Year ended 30 June	Profit / (loss) of Mirvac Limited Consolidated Group ($ million)
2014	36.7
2013	(478.5)
2012	(108.0)
2011	(347.8)
2010	(81.8)
2009	(618.8)

As indicated in Table 2, the accounting losses for Mirvac Ltd have been significant. These have included impairments which have not all resulted in tax losses. Nevertheless trading losses have also been incurred which have resulted in significant tax losses. Due to the severe negative impact of the GFC, the Mirvac Tax Consolidated Group has not had taxable income on which income tax is payable for some time.