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Tax Laws (Combating Multinational Tax Avoidance) Bill 2015

13 October 2015

This submission has been prepared by Greenpeace Australia Pacific Limited (GPAP) in response to the request for submissions to the Tax Laws (Combating Multinational Tax Avoidance) Bill 2015.

GREENPEACE AUSTRALIA PACIFIC is an organisation of over 500,000 people, including board members, staff, activists, volunteers and supporters who care deeply about protecting the environment. GPAP stands for positive change through action. GPAP investigates, exposes and confronts environmental abuse in Australia and around the world. GPAP champions environmentally responsible and socially just solutions including scientific and technological innovation.

Introduction

GPAP endorses the Government's intention to strengthen the Australian taxation system through legislation of the TAX LAWS AMENDMENT (COMBATING MULTINATIONAL TAX AVOIDANCE) BILL 2015. Tax avoidance is a serious global issue and, according to the OECD, corporate tax avoidance costs national governments around US$100 – 240 billion every year.[1] However, GPAP notes that more can be done to reduce the opportunities for tax avoidance. Although tax avoidance strategies may be technically legal they breach the intention and spirit of Australia's taxation laws.

This submission uses the example of Chevron to illustrate how large multinational corporations or significant global entities are well placed to avoid taxation. The consequence is that Australian taxpayers are left out of pocket of revenue on a scale equivalent to the Australian health or education budgets.

GPAP is particularly distressed that while the Government has done little to date and, proposes only to do a little more about the tax avoidance strategies of Chevron, it simultaneously advocated cutting services for ordinary tax paying Australians in areas like health and education. Further the Government is running an inquiry into how ordinary Australians could be prevented from making a tax free donation to nature groups.[2] Lastly GPAP wonder how Australian businesses are meant to compete with large multinational competitors that pay considerably less tax. In fact many large multinational corporations pay less tax than some struggling Australian citizens.

Because large multinational companies are better placed to employ tax avoidance strategies than local companies the belief that there is a level playing

[1] OECD (2015) OECD/G20 Base Erosion and Profit Shifting Project: Explanatory Statement, 2015 Final Reports, http://www.oecd.org/tax/beps-2015-final-reports.htm

[2] The Parliamentary Inquiry into the Register of Environmental Organisations. http://www.aph.gov.au/Parliamentary_Business/Committees/House/Environment/REO

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field, or a fair Australian taxation system, is brought into question. The value of fairness is ubiquitous in Australian life and the fact that some larger companies are able to avoid tax while other companies or individuals cannot is an affront to this value.

The TAX LAWS AMENDMENT (COMBATING MULTINATIONAL TAX AVOIDANCE) BILL 2015 and the four schedules it includes: definition of a significant global entity, multinational tax avoidance law, increased penalties for tax avoidance and profit shifting and country by county reporting, are steps in the right direction but it will not be able to prevent companies like Chevron avoid taxation, now or in the future.

GPAP is interested in whether the Australian Taxation Office (ATO) believe the Bill will prevent tax avoidance and will not simply contribute to the complexity of the already complex state of Australian taxation law. In order to address these issues GPAP supports greater transparency and public scrutiny of the tax returns of significant global entities and an Australian version of the Buffet Rule to be applied to corporate taxation.

Background

Governor Arthur Phillip arrived in New South Wales in 1788 with a royal instruction that gave him the power to impose taxes on the newly established colony. Import duties were placed on spirits, wine, beer and luxury goods in order to pay for the completion of Sydney's first gaol and provide for the orphans of the colony. Subsequently governments in Australia established systems of taxation designed to raise revenue to fund public works and services. It was not the intention of Governor Phillip or the administrations that followed him that some individuals or corporations should be able to avoid taxation because they were able to find loopholes or manipulate their finances in a particular way.

Today Australia's elected leadership insist that Australia's taxation system was not designed so some could avoid paying tax. After the inquiry into corporate tax avoidance was announced and before being replaced with Malcolm Turnbull, the previous Prime Minister, Tony Abbott, said:

"The essential principle is that you should normally pay tax in the country where you've earned the revenue." [3]

The Treasurer, of the time, Joe Hockey said:

"Let me be very clear, a tax cheat is a thief… I will give the Australian Taxation Office whatever laws it needs to ensure that the integrity of our taxation laws is

[3] http://www.theaustralian.com.au/business/abbott-legitimate-concerns-multinationals-are-evading-tax/story-e6frg8zx-1227296851505

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upheld."[4]

Between Governor Phillip and Australia's current Prime Minister, Malcolm Turnbull, large multinational corporations or significant global entities became better practised at evading and avoiding taxation through complex schemes, known as base erosion and profit shifting (BEPS). The problem of tax avoidance strategies is so severe that 29% of Australia's top 200 companies are paying an effective corporate tax rate of 10% or less, while more than 14% have an effective tax rate of 0%, well below the corporate tax rate of 30%.[5]

Last year the Tax Justice Network (TJN) in collaboration with United Voice conducted research that revealed an alarming problem of tax avoidance in Australia. The TJN produced a report that looked at the levels of tax paid over the last ten years by the top 200 companies on the Australian Stock Exchange (ASX). The Report, *Who Pays – ASX200 Full Report*, found that for all ASX 200 companies the average effective corporate tax rate over the last decade is 23%. The report found that within the ASX 200 companies 57% disclosed having subsidiaries in secret jurisdictions and 60% reported debt levels in excess of 75%, which may have artificially reduced their taxable profits.

This effectively robs Australian taxpayers of much needed revenue to fund basic services such as health and education. The impact of these practices was estimated to total approximately $8.4 billion in annual revenue. Saul Eslake, a prominent Australian economist, said the Australian tax system resembled Swiss cheese.[6] Nevertheless the Australian taxations laws are complex and there are more than 15,000 pages of law pertaining to taxation in Australia.

On 2 October 2014 the Government announced an inquiry into corporate tax avoidance which provided an interim report, *You Cannot Tax what you Cannot See*, on 18 August 2015.[7] Subsequently the Government formulated the Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015 and requested submissions for a public inquiry. GPAP welcome the opportunity to make a submission on this bill.

GPAP questions the definition of a significant global entity: "a parent entity of the entity operating in Australia with a turnover of a $1 billion or more." What limits does this place on the ATO's investigative remit?

The second schedule includes the definition of schemes that are the subject of

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[4] http://www.smh.com.au/business/joe-hockey-says-tax-cheats-are-thieves-20141009-113heo.html

[5] http://www.unitedvoice.org.au/news/who-pays-our-common-wealth

[6] http://www.smh.com.au/business/the-economy/australias-tax-system-is-like-swiss-cheese-saul-eslake-20150922-gjs8lt.html

[7]http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Corporate_Tax_Avoidance/Report_part_1

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the legislation in paragraph 177DA(1)(a). Does the ATO believe this covers the schemes most commonly used by tax avoiders and why does the ATO believe avoiders will not simply develop new schemes not covered by the legislation?

Schedule three doubles the penalties applying to multinational tax avoidance but GPAP notes that many penalties are waived or reduced where the law is in doubt. Will the ATO enforce penalties when they are applicable?

The fourth schedule provides for county by country reporting as outlined in the OECD BEPS agreement which seeks a standard of information consistent with the 'Guidance on Transfer Pricing Documentation and Country-by-Country Reporting of the Organisation for Economic Cooperation and Development and the G20'. But this schedule does not directly address the publication of information around tax avoidance. Transparency in this area is critical to accountability.

The Problem: Chevron a foreign-owned multinational that moves most of its profits offshore pays little if any tax and plans to leave a scarred and polluted Australia.

Since the Government announced this inquiry and formulated the TAX LAWS AMENDMENT (COMBATING MULTINATIONAL TAX AVOIDANCE) BILL 2015 the scale of the problem of corporate tax avoidance has become even starker. On 16 August 2015 Channel 7 Sunday Night revealed a corporate tax whistle blower, 29 year old accountant and father- to- be Antoine Deltour, leaked documents that allege to show that big multinational companies like Chevron, Rio Tinto, Glencore and BHP Billiton are just some of the companies moving more than $31 billion offshore without paying any tax. Deltour secretly downloaded the documents before walking out of his job at Price Waterhouse Coopers.[8] Subsequently the International Transport Workers' Federation (ITF) released a report on Chevron in September 2015.[9]

Chevron is the third largest and most profitable oil and gas company in the world with a market capitalisation of US$ 197 billion. Since 2011 Chevron Australia reported annual operating revenues of over $2.5 billion. While some corporate tax was paid in Australia, in Chevron's submission to the Inquiry into Corporate Tax Avoidance, Chevron notes it paid over $3 billion in federal and state taxes between 2010 and 2014. Chevron does not mention that it then received refunds from the ATO of over $25 million in 2011 and nearly $6 million in 2014. Chevron has at least 600 shell companies registered in Bermuda and Delaware, in the United States of America. Chevron's corporate structure in Australia is controlled from locations in Bermuda, Delaware and Singapore. Chevron stashed over US$ 35 billion in un-taxed revenues in these offshore accounts. Between 2004 and 2008 Chevron shifted $2.5 billion from Australia to

[8] https://au.news.yahoo.com/sunday-night/features/a/29274306/exclusive-31bn-sent-offshore-to-avoid-tax/

[9] http://www.world-psi.org/sites/default/files/documents/research/en_itfchevron_emailversion.pdf

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Delaware by borrowing in Delaware (at 1.2%) and then lending in Australia (at rates above 9%). The alleged purpose was to drain profits out of Australia in order to reduce taxable payments. The Delaware parent company holds over $9.1 billion worth of shares in Chevron Australia but it only pays an annual tax bill, in the US, of US $175. The US Government has not approved Chevron's tax filings for over 7 years. The ATO is investigating Chevron's latest tax scheme to reduce Chevron's tax bill by $35 billion. $35 billion is greater than the entire annual Commonwealth budget for education. The company responded to allegations of tax avoidance, it said:

"Chevron abides by a stringent code of business ethics, under which we comply with all applicable laws and regulations in the countries in which we operate, including Australia… As one of Australia's largest investors, Chevron will pay its fair share of tax and, through the Chevron-led Gorgon and Wheatstone Projects; Australia will continue to enjoy the associated economic benefits over the life of the projects." [10]

Chevron's response can provide Australian taxpayers with little comfort. Chevron leads the massive Gorgon Gas Project in Western Australia. The Gorgon project is expected to begin producing gas with an estimated annual post tax operating cash flow above US $8 billion from 2019-2032 and continue above $5 billion a year until 2057. Chevron will pay no royalty (PRRT) payments on the Gorgon project for the first eight years or longer. Once Chevron has extracted the gas from Gorgon what will they leave behind? Chevron will have left relatively little wealth and an environmental legacy of harm? Will Chevron pay for that harm? Already Dr Peter Erskine from the University of Queensland estimates the clean-up of more than 50 000 abandoned mines will cost tens of billions of dollars.[11] Will Chevron fund the rehabilitation of the Gorgon site?

The Government's Bill is a step in the right direction but it will not address the practices of companies such as Chevron. GPAP recommends that in order to address the practices of significant global entities like Chevron the Government needs greater transparency measures and to introduce measures like a Buffett Rule for Australia which is the simplest way of ensuring significant global entities such as Chevron pay their fair share.

The Solution: A Buffett Rule for Australia

The solution to tax avoidance strategies such as Chevron's is more transparency in order to determine how much revenue is really being produced by a significant global entity and an Australian Buffet Rule to ensure that that entity is still paying the corporate rate after deductions.

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[10] https://wpcluster.dctdigital.com/energyvoice/oilandgas/88013/chevron-vows-to-pay-fair-share-of-tax-on-australian-gas-project/

[11] http://www.abc.net.au/news/2015-09-19/taxpayers-may-foot-bill-for-mine-rehabilitation/6787954Will

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In the Interim Report of the Inquiry into Tax Avoidance the Additional comments from the Australian Greens explains the purpose and importance of transparency in the taxation system.

"Opening up financial details to public scrutiny is a strategic priority. Within international agreements to develop a uniform approach to tax avoidance , strong transparency changes are a unilateral measure Australia can make straight away without disrupting the multilateral discussions, while also showing Australia is serious about confronting this global blight on national governments." [12]

On the issue of transparency 1986 Australian of the Year, businessman and philanthropist, Dick Smith, agreed and he said:

"If you have turnover of $100 million you should be proud to show you are paying your tax – and most are. The ones opposing this, I'm absolutely convinced, are basically cheating the system, avoiding their taxes and we should not let them get away with it." [13]

In response the Assistant Treasurer Kelly O'Dwyer said the ATO has "comprehensive powers" to make sure companies pay their tax. She said:

"The bill is currently before the Senate and the government will continue discussions with the crossbenchers to secure the passage of the bill." [14]

However, GPAP doubt's the Government's bill will address strategic tax avoiders like Chevron who will simply find new loopholes to exploit. And GPAP notes the Federal Governments cuts to the ATO of 4,400 staff could only reduce its capacity to address tax avoidance by significant global entities.[15] Therefore GPAP propose a Buffett Rule for Australia. A Buffett Rule for Australia would seek to charge a minimum average rate of tax; the Australian corporate rate is 30%, on significant global entities. The Buffet Rule is named after billionaire investor Warren Buffett, who commented that his secretary should not pay a higher average rate of tax than he does. The Buffet Rule would apply to a significant global entities profit before it goes through the process of making tax deductions. The Buffet Rule would mean that if a significant global entity was able to make large deductions to reduce taxable revenue it would still pay a reasonable amount of tax based on its total income.

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[12] http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Corporate_Tax_Avoidance/Report_part_1

[13] http://www.smh.com.au/federal-politics/political-news/dick-smith-savages-malcolm-turnbull-for-shielding-rich-from-tax-transparency-20151003-gk0j90.html

[14] http://www.smh.com.au/federal-politics/political-news/dick-smith-savages-malcolm-turnbull-for-shielding-rich-from-tax-transparency-20151003-gk0j90.html

[15] http://www.abc.net.au/news/2015-05-12/ato-workers-walk-off-job-in-protest-over-cuts/6462594

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The elegant simplicity of the Buffett rule is that it doesn't try to close tax loopholes only to have clever accountants find new ones; it simply makes deductions after a certain point worthless. It forces significant global entities to pay their fair share of tax. And GPAP notes the complexity of the TAX LAWS AMENDMENT (COMBATING MULTINATIONAL TAX AVOIDANCE) BILL 2015 and its use of penalties rather than simply preventing significant global entities from avoiding paying tax by introducing an Australian Buffett Rule.

Conclusion

GPAP supports the TAX LAWS AMENDMENT (COMBATING MULTINATIONAL TAX AVOIDANCE) BILL 2015 as steps in the right direction. But GPAP concludes that instead of making already complex taxation laws more complex and still relatively vulnerable to new tax avoidance strategies the Federal Government should introduce an Australian Buffett Rule supported by a well-resourced ATO with powers to scrutinise and publicise the revenues and transactions of significant global entities. GPAP contends that the order of revenue lost by Australian taxpayers because of the avoidance strategies of multibillion dollar entities shows an unconcealed contempt for Australian sovereignty and values.