United Voice Submission:
Tax Integrity: Multinational Anti-Avoidance Law
9 June 2015

About United Voice
United Voice is a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. Members work in a diverse range of industries including aged care, early childhood education and care, cleaning, hospitality, healthcare, security, emergency services and manufacturing.

A large number of United Voice members work in the public sector or in publicly funded sectors. Many United Voice members are in low-paid and under-valued employment, and all rely on government to provide access to quality public services, to ensure a secure retirement, and to monitor and regulate economic activity to ensure a fair and equitable society.

Introduction
United Voice has helped to lead a national discussion on corporate tax avoidance and will continue to pursue concrete and practical solutions. Corporate tax avoidance is a major concern to our 120,000 members who pay their fair share of taxes and expect corporations to do the same. We all benefit from services provided by government that are funded through our tax system.

United Voice welcomes this inquiry and the opportunity to make a submission.

We have made brief comments on this proposed bill and have included our previous submissions which include more detailed recommendations on corporate tax reform.

For more information on this submission, please contact Jacqui Woods via jacqui.woods@unitedvoice.org.au (02) 8204 3000.

Jo-anne Schofield
National President

Comments on Tax Integrity: Multinational Anti-Avoidance Law

United Voice welcomes the government's acknowledgement that corporate tax avoidance is a genuine issue facing Australia. However, the proposed legislation, together with other measures introduced as part of the 2015-16 Federal Budget, do not do nearly enough to tackle this serious problem. Corporate tax avoidance undermines government capacity to deliver essential services, maintain and improve Australia's standard of living and create an environment that sustains broad-based economic growth.

The proposed amendments to the general anti-avoidance rule in Part IVA are necessary and important, but insufficient. While this proposal indicates otherwise, corporate tax avoidance in Australia is not limited to a small number of foreign multi-national corporations. There is not much in the proposed law that is not a re-packaging of the efforts that the ATO is already undertaking.

Even though the scope of the law is very narrow, it is troubling that no effort has been made to project what additional revenue may be generated from its implementation.

The proposal does not address the issue of adequate staffing at the ATO or the need for the ATO to be independent from the influence of large corporations, accounting firms and tax advisors who seek to influence the adoption, interpretation and implementation of Australia's tax laws.

The application of the law only to foreign multinationals with annual revenue greater than $1 billion is also problematic on several fronts. Firstly, it does not address corporate tax avoidance by companies, whether domestic or foreign, with annual revenues less than $1 billion. This does nothing to level the playing field for the vast majority of smaller businesses who play by the rules and pay their fair share of tax. Secondly, the proposed law only looks at one method of corporate tax avoidance and ignores others. Thirdly, there is no stated methodology to systematically identify which companies operating in Australia, with revenues under $1 billion, may be a part of larger global businesses.

There are also many Australian companies that have been involved in significant tax avoidance issues. Local companies that have allegedly been involved in aggressive tax avoidance in Australia, and elsewhere, include: BHP Billiton, Rio Tinto, Origin Energy, Ramsay Health Care, APA Group, Spark Infrastructure and Transurban. The use of secrecy jurisdictions or tax havens by Australian companies is widespread.

As we have stated in previous submissions on this issue, there needs to be much greater transparency and disclosure of corporate tax practices for all Australian public companies. While Australia needs to continue to play a constructive and supportive role in the development and implementation of the OECD's BEPS Action Plan, there are many concrete measures that Australia can take now without waiting for the global process to unfold.

Australia should lead by example and move forward with enhanced measures for disclosure of corporate tax practices that the rest of the world can follow. These measures will improve the

overall business climate in Australia and provide small businesses and individual tax payers the confidence that large companies are also contributing their fair share to the services we all rely on.

Previous United Voice Submissions

United Voice Submission:
Senate Standing Committee on Economics
Inquiry into Corporate Tax Avoidance
February 2015

About United Voice

United Voice is a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. Members work in a diverse range of industries including aged care, early childhood education and care, cleaning, hospitality, healthcare, security, emergency services and manufacturing.

A large number of United Voice members work in the public sector or in publicly funded sectors. Many United Voice members are in low-paid and under-valued employment, and all rely on government to provide access to quality public services, to ensure a secure retirement, and to monitor and regulate economic activity to ensure a fair and equitable society.

Introduction

Along with the great majority of Australians, United Voice members are happy to contribute their fair share in taxes to fund the quality services and infrastructure we all rely on but they want to know that everyone else is paying their fair share too.

> *"Our taxes should be put to good use: they should fund hospitals, schools, infrastructure and community services. We should ask whether we get value for money. Do we get the right support in our communities for aged care, dental or housing? I think you'll find that most of us have experienced waiting for hours in an emergency department, or trying to get a loved*

one into a unit that's miles and miles away, or putting off dental check-ups because we can't afford the upfront cost.

We're not getting the returns for the community, because not everyone is paying a fair amount of tax. That's a fact."

- *Matt, Paint Manufacturer, WA*

"Australians aren't stupid. If the money's not there, we have to ask why. Is it because we've spent too much? I think most people could tell you our hospitals aren't over funded. Or, is it because we're letting those most able to pay off the hook?

The guys I work with, we all pay our taxes. We have no tax deductions. But then you hear these outrageous stories of companies paying one or two per cent in tax – it makes a bit of a joke of our 30 or so per cent rates.

We're not after jet planes for ourselves. We're not after penthouses. All we're asking for is the money that should rightfully be spent on our communities.

If corporations and the super-rich don't pay their fair share, we don't have the money to provide services for our communities – schools, doctors, ambulances, police – the basics which we rely on.

- David, Security Worker, VIC

United Voice members believe government has a crucial role to play in delivering the services that the community relies on. Quality public services allow all Australians to thrive and prosper. They also provide businesses with the educated, healthy workforce, prosperous consumers and stable conditions required in order for their businesses to succeed.

In order to provide the services that ensure a successful and prosperous society, we must ensure we are collecting the revenue required to fund them properly. This needs to be done in a way that is fair and equitable with everyone contributing their fair share.

When corporations aggressively minimise their tax obligations, we all pay the consequences through reduced services, outdated infrastructure and increasing inequality.

United Voice welcomes this important inquiry and the opportunity to make a submission.

For more information on this submission, please contact Madeleine Holme via madeleine.holme@unitedvoice.org.au or (02) 8204 3000.

David O'Byrne
National Secretary

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Executive Summary

Corporate tax avoidance has received widespread public attention in recent months, both in Australia and internationally. Well-known brands such as Apple, Google, IKEA and Chevron have become the public face of corporate tax avoidance.[1] This has prompted a number of positive responses including the formation of this inquiry and Treasurer Joe Hockey's announcement of an audit into ten foreign multinationals operating in Australia.[2]

While the tax practices of these foreign corporations have attracted rightful scrutiny and public criticism, Australia's capacity to tackle corporate tax avoidance has unfortunately declined since the 2013 federal election. According to Australian Taxation Office (ATO) employees, recent cuts to the ATO have crippled the organisation's capacity to respond adequately to large scale tax avoidance issues. The ATO has already lost 3,000 jobs including hundreds of positions in the compliance and audit unit.[3]

In addition to cuts to the ATO, the current Federal Government has repealed critical tax and transparency measures introduced by the previous government, amounting to approximately $1.13 billion in foregone revenue.[4] These actions represent an erosion of the capacity to raise revenue and a lack of commitment towards taking genuine action against corporate tax avoidance.

The tax aggressive behaviour of some Australian multinationals should be of considerable concern for government and civil society alike. The need for Australia to reduce its debt and balance its budget has repeatedly been cited as the reason behind attempts to introduce austerity-styled policies aimed at cutting social services, privatising public assets and introducing user-pays models within the health and education sectors. The budget introduced by the current government last May has been widely criticised for having a disproportionate impact on low- and middle-income Australians. Yet, within the ensuing debate, little attention has been given to the issue of revenue-raising.

At the same time, the issues we face in Australia are emblematic of a much larger systemic problem of global corporate tax avoidance. Companies are able to utilise a network of subsidiaries registered in secrecy jurisdictions to structure their internal company finances in ways designed to significantly reduce their overall tax obligations. In devising such arrangements they are aided by some of the largest accounting and audit firms. The specialists in 'tax planning' have strong links to tax havens and are often auditing the same companies they are advising on tax.

In September 2014, United Voice, in conjunction with the Tax Justice Network of Australia (TJN-Aus) published a report, *Who Pays for Our Common Wealth? Tax Practices of the ASX 200*. The report generated significant attention as it was the first broad investigation into the tax payments and practices of Australia's largest listed companies over the past decade. While elements of the report may have been misrepresented, we are pleased that the ground-breaking analysis generated a much needed discussion on the corporate tax practices of Australian companies.

The report was issued in the context of proposed cuts to the federal budget which would negatively impact Australians at lower income levels. The report demonstrated an alternative approach to revenue raising to avoid such cuts.

United Voice members care deeply about tax revenues, the essential services they fund and the jobs created to provide those services. United Voice will continue to advocate that all parts of society contribute their fair share and follow the same set of rules. We need to focus on enhancing revenues

rather than cutting the services that families, communities and businesses need to thrive and prosper.

This submission builds upon the report's recommendations which called for greater transparency and disclosure of the tax practices of listed companies.

We believe it is critical that Australia continues to push for stronger rules and enforcement at the global level, including through the G20 and the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS). Although significant progress has been made at the global level much more needs to be done. Australia should not wait for changes at the global level, but lead by example and reform our corporate tax system to ensure that everyone pays their fair share and follows both the letter and the spirit of the law wherever they operate. Stronger rhetoric is not enough, Australians need and demand strong and effective action on tackling and preventing corporate tax avoidance.

The recommendations in this submission reflect the views of our 120,000 hardworking members who pay their fair share of taxes and expect and demand that large corporations pay their fair share as well.

In this submission, we aim to explain the significance of the findings in our original report by addressing the following topics:

1. The primary methods Australian companies use to minimise their tax obligations;
2. How current levels of disclosure prevent adequate oversight of tax aggressive behaviour by Australian companies;
3. The role of accounting firms in designing and facilitating tax avoidance strategies; and
4. The specific problem of trusts within stapled security structures among Australian listed companies.

While the report showed that many large Australian corporations do play by the rules and pay their fair share of taxes, others do not. When some corporations and individuals are allowed to play by their own set of rules it undermines the legitimacy of the whole tax system, impacts the delivery of public services and rewards irresponsible and unethical behaviour.

This inquiry must lead to the necessary changes in rules and improved enforcement that will create a level playing field for all businesses, large and small.

In the context of concerns over the sustainability of the Federal Budget, the issue of tax avoidance and who pays has never been more important. Australia must do what it can to help lead the process for genuine change in national and international tax rules, while taking all action possible to ensure that our tax collection efforts are adequately resourced and supported to combat corporate tax avoidance.

Summary of Recommendations

1. The ATO must be adequately resourced in order to carry out its important work. This includes independent, expert staff and the necessary tools and funding to pursue tax avoidance.
2. The penalties for corporate tax evasion need to be increased and laws extended to effectively cover a broader range of corporate tax avoidance strategies.
3. There must be complete and timely implementation of the law authorising the ATO to publicly disclose the tax payments made by all companies with annual incomes over $100 million.
4. Australian companies should be required to disclose in standardised formats in their annual reports all tax concessions and tax credits received where the effect is to lower the total amount of tax paid and to reduce their effective tax rate.
5. Listed companies should be required to disclose all of their wholly- and partially-owned subsidiaries and to provide explanatory statements for any subsidiary registered in a secrecy jurisdiction. Penalties should be applied for any failure to disclose a subsidiary.
6. Australian companies should disclose all intra-group loans and the Tax Act should be amended to disallow all interest deductions on intra-group loans that are not established at arm's length.
7. Existing whistleblower protection laws should be strengthened and extended to cover private sector employees in order to encourage exposure and prosecution of corporate tax evasion, fraud and other white collar crimes.
8. Australian multinational corporations should be required to produce detailed country-by-country reports that disclose the following information:
    i. The name of each country in which it operates.
    ii. The names of all its subsidiaries and affiliates in each country in which it operates.
    iii. The performance of each subsidiary and affiliate in every country in which it operates, without exception.
    iv. The tax charge included in its accounts of each subsidiary and affiliate in each country in which it operates.
    v. Details of the cost and net book value of its fixed assets located in each country in which it operates.
    vi. Details of its gross and net assets for each country in which it operates.
9. The Australian Government should commission an investigation into the effect of stapled securities on the Australian tax base, and consider disallowing these structures in line with current international standards.

The Business of Tax

Tax avoidance is a multi-billion dollar global business. The tax industry, and in particular the dominant 'Big 4' auditing and accounting firms – PricewaterhouseCoopers, Ernst & Young, Deloitte and KPMG – play an important role in developing tax strategies on behalf of multinational corporate clients. With combined revenues of over $120 billion and employing over 700,000 people worldwide, the Big 4 are perhaps best known as the auditors for the vast majority of the world's largest companies (with market share over the audits of 99% of the FTSE 100).[5] Yet the Big 4 also draw an important stream of income from their corporate clients for the provision of tax and consultancy services. All too often they demonstrate a willingness to act as key enablers of corporate tax avoidance.

A worrying trend in the last decade has seen Australian governments and departments increasingly rely on outsourcing various aspects of research and tax policy development to the very same firms who provide commercial tax services to corporate clients. Given their central role in facilitating tax avoidance and the conflict of interest that this generates, Australian governments must reconsider drawing on advice provided to them by the Big 4 global accounting firms in relation to global or domestic taxation matters, corporate taxation and international standards.

Furthermore, the independence of the ATO from these accounting firms is essential to protect the integrity of Australia's corporate tax base.

The Tax Industry and Tax Avoidance

The 'Big 4' accounting firms have been implicated in some of the most serious cases of global tax avoidance. In the UK, following the banking system meltdown of 2008-09, the role of the Big 4 came under close scrutiny for passing the audits of financial institutions which subsequently collapsed, with a House of Lords inquiry accusing them of a 'dereliction of duty' and 'basking in a culture of box ticking'.[6] A 2011 investigation by the UK's Financial Times, found that the four firms operated amongst them 81 offices in tax havens.[7]

The actions of one of these firms, PricewaterhouseCoopers (PwC), have received recent scrutiny as a result of the 'Luxembourg Leaks', revealed by the International Consortium of Investigative Journalists in November 2014. Importantly, these leaks demonstrated that PwC was directly involved in brokering the secret tax schemes of 343 multinational companies in Luxembourg over the period 2002 to 2010. According to an *International Consortium of Investigative Journalists (ICIJ)* investigation, PwC tax advisors helped to negotiate 548 separate tax deals on behalf of their corporate clients during the period covered by the leaks.

PwC facilitated the design of complex financial structures for their clients to create drastic tax reductions, including 'financial strategies that feature loans among sister companies and other moves designed to shift profits from one part of a corporation to another to reduce or eliminate taxable income.' In the case of many companies, subsidiaries were established in Luxembourg into which hundreds of millions of dollars were transferred from across the world, while these entities maintained minimal actual presence and economic activity in Luxembourg itself. Such arrangements allow companies to reduce their tax to as little as 1%.[8]

A separate leak of documents from Luxembourg in December 2014 also implicated the other three major accounting firms, Ernst & Young, Deloitte and KPMG in brokering the tax rulings for a further 33 multinational firms.[9]

In Australia, the 'Big 4' have spearheaded a push by the business lobby to reduce the corporate tax rate, while arguing that a greater share of the overall tax burden should fall on working people through the introduction of new indirect consumer taxes such as an extended GST. Government and civil society have been repeatedly reminded that Australia not only has a deficit problem, but also a tax problem. That is, that Australia's corporate tax rate is 'uncompetitive' and that corporate taxes are relatively 'inefficient' compared to other sources of taxation such as indirect consumer taxes.

The 'Big 4' global accounting firms have positioned themselves as key sources of authority on the taxation system, and have advocated this agenda both within government and non-government policy forums. At issue is the role that these accounting firms play as both tax policy experts who have the ear of governments, while deriving the bulk of their income from developing the tax planning schemes utilised by multinational corporations. There is a strong and growing body of evidence that links these accounting firms to the widespread nature of tax avoidance and corporate structures established in secrecy jurisdictions. If any serious action is to be taken to address tax avoidance on the national and global level, the close involvement of the global accounting industry in the offshore financial system must be acknowledged.

In light of the above, it is particularly alarming that in January 2014 a proposal was put forward for consideration for the outsourcing of ATO company audits to the same four big accounting firms.[10]

The Need for an Independent and Properly Resourced ATO

According to current and former ATO staff, recent program cuts and job losses have crippled the organisation's capacity to respond adequately to large scale tax avoidance. Unlike individual tax avoidance at the domestic level, the schemes utilised by multinational corporations are often extraordinarily complex and involve webs of information that require large teams of experts to untangle. Despite the recent assurances by Joe Hockey that the tax office would be given whatever powers necessary to tackle tax 'thieves', the 2014 budget resulted in 3,000 job cuts at the ATO with an additional 1,700 jobs to go by the end of the 2016-17 financial year.

In the 2013 budget, ATO funding was increased by $70m over four years to carry out increased auditing on the use of trust structures by wealthy individuals for the purposes of tax avoidance, a measure that was expected to generate $311 million in revenue. A further $109.1 million was invested into increasing compliance in relation to corporate profit-shifting, allowing the ATO to open 66 new cases in relation to profit shifting.[11] Unsurprisingly, the introduction of these measures was strongly criticised by members of the big business lobby and corporate accounting industry, who argued that the measures would create 'uncertainty' for business and that the ATO should not be using new powers to 'chase' after revenue.[12]

It took the newly elected Coalition government only one month following the 2013 election to commence undermining revenue-raising reforms introduced by the previous government. This started with scrapping 64 tax and superannuation changes,[13] at a total combined cost of $1.13 billion in foregone revenue over the forward estimates.[14]

A degraded and underfunded ATO is short-sighted and unsustainable from a budgetary standpoint.

Recommendations:

1. **The ATO must be adequately resourced in order to carry out its important work. This includes independent, expert staff and the necessary tools and funding to pursue tax avoidance.**

2. **The penalties for corporate tax evasion need to be increased and laws extended to effectively cover a broader range of corporate tax avoidance strategies.**

3. **There must be complete and timely implementation of the law authorising the ATO to publicly disclose the tax payments made by all companies with annual incomes over $100 million.**

Methods of Corporate Tax Avoidance in Australia

Until now, the extent to which Australian companies engaged in aggressive tax planning schemes has been relatively unclear. A 2013 Treasury report noted that a lack of consistent data and evidence made it difficult to actually quantify the impact of multinational tax avoidance on the Australian tax base. [15] Indeed, sufficient and reliable data for tracking tax avoidance is a problem experienced across the world. One US economist has likened investigating the tax practices of most multinational corporations to entering 'the economic equivalent of an astrophysical black hole.'[16]

In September 2014, the Tax Justice Network of Australia, in association with United Voice, published the first full-scale examination of the tax practices of Australia's 200 largest corporations in a report entitled *Who Pays for our Common Wealth?: Tax Practices of the ASX200*. As with many other reports that attempt to investigate the nature of corporate tax avoidance, the potential scope of this report was hampered by the limited disclosure of Australian publicly listed companies on matters relating to:

- The full extent and scope of partially and wholly owned foreign entities;
- The amount of tax owed and paid across different jurisdictions;
- The extent of government subsidies and tax concessions accessed by individual corporations; and
- Other tax planning activities including the use of debt leveraging and the role that trust structures play within group accounting.

While acknowledging these limitations, the authors of this report sought to identify a number of key proxies derived from publicly available data that help to establish the likelihood that particular Australian companies may be engaged in aggressive tax minimisation. The proxies chosen were:

- A comparison of effective tax rates to the statutory rate;
- Subsidiaries in secrecy jurisdictions; and
- The amount of company debt compared to company equity (thin capitalisation).

Here we will explain the purpose of the proxies utilised in the report and why the results should be of concern to government and other bodies concerned with curbing base erosion and profit shifting behaviour among Australian companies.

Identifying Corporate Tax Avoidance

Corporate tax avoidance can involve both domestic and international aggressive tax planning schemes. According to the ATO, domestic tax avoidance schemes commonly involve the abuse of concessions such as research and development offsets, the strategic use of loans between related parties and labour hire and employee benefit schemes designed to lower company tax obligations. Additionally, the ATO is concerned about the use of company trust structures which can facilitate tax avoidance by:

- Transferring income to beneficiaries on a lower marginal tax rate via intermediary trust structures
- Washing profits using trusts and loss entities – where profits are concentrated in trust structures and losses are concentrated in companies that attract the ordinary rate of tax
- Claiming tax deductions for funds sent offshore using foreign trust arrangements.[17]

In recent years, the widespread use of international trust and subsidiary structures by multinational corporations has attracted a great deal of attention from both tax justice campaigners and international bodies like the OECD and the G20. It is now common knowledge that the use of such structures – by individuals as well as companies – facilitates widespread base erosion and profit shifting across national borders, leading to the erosion of national tax bases and the concentration of wealth in secrecy jurisdictions.

The UK-based Tax Justice Network has estimated that between US$21-$32 trillion (AU$27-41 trillion) of global private financial wealth was invested in offshore secrecy jurisdictions in 2012.[18] The extent of corporate wealth held within secrecy jurisdictions is currently unknown, but current estimates suggest that hundreds of billions, if not trillions of dollars in corporate income are washed through secrecy jurisdictions each year.[19]

The impact that profit shifting has on national tax bases has led to an increased understanding of how multinational companies are able to structure their components to avoid paying tax:

1. Multinational companies are able to establish subsidiary companies in low- or no-tax jurisdictions (often called tax havens or secrecy jurisdictions);
2. Intra-group trading can take place via these subsidiaries, allowing the company to establish their own price for the provision of goods or services or transportation (often referred to as transfer pricing);
3. Additionally, the company can utilise the secrecy jurisdiction subsidiaries as holding companies that own assets including intellectual and physical property rights, bonds or shares;
4. Finally, these secrecy jurisdiction entities can issue loans to other parts of the company and set their own interest payments, thus elevating the debt and reducing the profitability of subsidiaries in locations where tax rates may be higher.[20]

The push to curb base erosion and profit shifting via these multinational structures is severely hampered by the fact that, within the international tax system, multinational companies are not treated as unitary wholes. This means that each individual subsidiary – whether it is based in a secrecy jurisdiction or not – is treated in isolation from the rest of the corporate group. The current methods of oversight for intra-company trade are thus insufficient to adequately prevent or dis-incentivise tax avoidance via secrecy jurisdictions.

Tax Concessions and Effective Tax Rates

Effective Tax Rates can be calculated in a variety of different ways and are therefore an imprecise measure of whether a company is engaged in aggressive tax planning. The Effective Tax Rates calculated in our *Who Pays for our Common Wealth?* report captured the public's attention; however, as we pointed out in the report,, these figures are essentially reflective of the tax paid *after* the majority of tax avoidance could have taken place. This is because most tax avoidance by multinational companies takes place at the subsidiary level prior to the consolidation of group accounts. Thus, effective tax rates are in some ways a poor measure of tax avoidance.

Despite this, low effective tax rates are indicative of the capacity or willingness of a company to aggressively pursue locally defined tax incentives and industry subsidies in order to lower the overall tax paid. The lower the effective tax rate, the more likely the company has engaged in aggressive tax planning within the defined rules of Australian tax law. In this case, the longevity of the analysis is key – while a low tax rate one year may be genuine, consistently low tax rates across a ten year period begin to show a definable pattern. Thus, when considered alongside other proxies such as thin capitalisation and secrecy jurisdiction usage, effective tax rates became another powerful proxy for aggressive tax avoidance practices.

The case of Macquarie Group illustrates this point. Macquarie Group has been under international scrutiny for using offshore banking units in order to lower its effective tax rate down to just 10% between the years 2001-2011. The activities of Macquarie have attracted the attention of both the OECD and the ATO. The ATO conducted an investigation into the Group's accounts between 2006 and 2008. This investigation prompted some changes in the company's practices, including raising their effective tax rate from 15% to above the statutory 30%. Thus, in the case of Macquarie, a lower effective tax rate was directly linked to aggressive tax planning.

Additionally, some companies have the capacity to reduce their effective tax rates through access to generous tax concessions. Fuel tax credits, accelerated depreciation concessions, and research and development concessions account for the largest corporate tax breaks. In 2010-11 they cut the total corporate tax bill by $7 billion.[21] In most cases, companies do nothing wrong by accessing these deductions. However, given that corporate tax concessions represent such a significant source of foregone public revenue and are open to potential tax abuse, greater transparency in regards to who gains access to these concessions is necessary. The mining industry in particular relies heavily on each of the three main types of tax deductions, explaining in large part the low effective tax rate for the industry.

In our investigation of ASX200 companies, we found that:

- The average annual effective tax rate of ASX200 companies was 23% over the decade 2004-2013.
- Nearly a third of ASX200 companies pay an effective tax rate of 10% or less, while more than 14% have an effective tax rate of 0%.
- The vast majority of ASX200 companies pay close to the statutory rate however the activities of a small number of tax aggressive companies have a large impact on Australia's corporate tax base.

Recommendation:

4. **Australian companies should be required to disclose in standardised formats in their annual reports all tax concessions and tax credits received where the effect is to lower the total amount of tax paid and to reduce their effective tax rate.**

Secrecy Jurisdictions

The establishment of subsidiaries within secrecy jurisdictions is a principle facilitator of multinational corporate tax avoidance. Thus, whether a company has subsidiaries established in secrecy jurisdictions is one of the most important proxies for predicting aggressive tax planning activities.

Secrecy jurisdictions can facilitate transfer mispricing, false invoicing, exaggerated intra-group debt financing and the concealment of assets, all of which are core to base erosion and profit shifting as defined by the OECD. There may be reasons outside of a tax-planning framework for why a company might legitimately choose to establish a subsidiary in a secrecy jurisdiction. However, in these instances the company in question should have no hesitation in explaining their reasons.

In our investigation of ASX200 companies, we found that:

- A quarter of all ASX listed companies report registering subsidiaries in 40 different secrecy jurisdictions.
- Nearly three quarters of ASX200 companies are multinationals, collectively operating 5,421 subsidiaries registered in 143 countries.
- 78% of ASX200 multinational companies (113 companies in total) report utilising secrecy jurisdictions as part of their operations.
- A total of 1,078 ASX200 subsidiaries are registered in 35 different secrecy jurisdictions.
- ASX200 companies account for 48% of all secrecy jurisdiction subsidiaries utilised by publicly-listed companies in Australia.

This analysis is limited by the levels of disclosure that each company chooses to employ. Our report indicated a number of examples where companies had either substantially reduced their disclosure of registered subsidiaries – as in the case of Westfield – or were found by third-parties to be grossly under-disclosing their registered subsidiaries – as in the case of Rio Tinto and BHP. For this reason, it is not possible to definitively say how many subsidiaries Australian companies have registered in secrecy jurisdictions. Our data is also limited to publicly listed companies, as we do not have the capacity to research private entities.

The business lobby response to the Tax Justice Network/United Voice report largely ignored the global debate around the need to reform the international dimensions of the tax system in order to curb base erosion and profit shifting. Importantly, none of the respondents acknowledged or sought to account for the widespread use of secrecy jurisdictions by Australia's largest multinational corporations.

The recent Luxembourg Leaks scandal – involving the leaking of thousands of tax agreement documents from the secrecy jurisdiction of Luxembourg – demonstrates how subsidiaries and financing structures established in a secrecy jurisdiction can facilitate tax avoidance. Importantly, dozens of Australian companies have been implicated in these leaks, including AMP, Macquarie Group, Lend Lease, Goodman Group and the Future Fund, among others with property interests. The leaked tax agreements reveal how multinational companies utilise a number of strategies, including hybrid debt structures, total swap returns, royalty payments and intra-group loans, to move large volumes of profits around the world in exchange for a small fee paid to the Luxembourg authorities.[22]

Furthermore, these leaks demonstrate that the use of secrecy jurisdictions for tax planning purposes has had a sizeable impact on the Australian tax base. For instance, the leaks shine a light on the subsidiary structures and the secret tax agreements which allowed the privately-owned Swedish furniture giant IKEA to shift profits from Australia into Luxembourg subsidiaries. These structures

helped the company to reduce an estimated $1 billion in profits since 2003 to a taxable profit of just $103 million, reducing its Australian tax rate to just 3% over 12 years.[23] AMP is also reported to have utilised 'profit participating loans' and a Luxembourg company structure to arrange for their profits in European infrastructure and utility projects to be treated as capital repayments rather than dividends. Profits generated from some $1 billion in investments in turn attracted just $190 in tax for every $1 million invested.[24]

Additionally, a tax agreement with the Luxembourg tax office allowed Australia's own sovereign wealth fund, the Future Fund, 'to sidestep almost all tax'. Under a 'total swap return' agreement, the profits generated by the Future Fund from a $500 million investment in Europe were routed via Luxembourg and recorded as profits in a Cayman Islands subsidiary company. The Luxembourg tax authorities in turn collected an income tax of just $136,000.[25]

Recommendation:

5. **Listed companies should be required to disclose all of their wholly- and partially-owned subsidiaries and to provide explanatory statements for any subsidiary registered in a secrecy jurisdiction. Penalties should be applied for any failure to disclose a subsidiary.**

Thin Capitalisation

Debt leveraging, or thin capitalisation, was the final proxy utilised in the Tax Justice Network/United Voice report. Excessive debt financing has been acknowledged by the ATO and internationally as being potentially tax aggressive and new regulations have limited the amount of debt that Australian companies are allowed to write-off as a deduction against their taxable income. Intra-group trading can artificially elevate the debt held by a parent company while in reality not affecting the actual profitability of the company since the debt may be owed to a related party registered in a no- or low-tax jurisdiction. Thus, when taken into account alongside the use of secrecy jurisdictions, thin capitalisation becomes another powerful indicator of whether a company may be aggressively minimising their tax obligations.

Several examples serve to show how debt can be utilised in tax planning schemes. In 2010, an ATO investigation was initiated into the tax planning practices of Fortescue Metals Group when it emerged that the company was able to reduce its tax bill to 0% by writing off the tax against debts owed. Over the period 2004-2013, Fortescue Metals had an average debt level of 389%, and lost on average 64% of its profit to financing costs.[26]

More recently, a case involving the large multinational, Chevron, demonstrated that the company had utilised loan structures and related party payments to deliberately avoid paying $258 million in tax obligations in Australia. The ATO has argued that Chevron restructured its operations in 2008, creating a subsidiary in the US state of Delaware for the sole function of lending money to an Australian subsidiary.[27] A similar case involving Australia's largest coal miner, Glencore, demonstrated how the Swiss-based multinational was able to utilise $3.4 billion in intra-group loans that attracted elevated interest rates to reduce their Australian tax bill to almost nothing.[28]

Findings like this demonstrate the impact that debt financing schemes can have on the Australian tax base. Thin capitalisation has consequently been of concern to tax authorities both in Australia and overseas. Until recently, the ATO defined thin capitalisation as debt which exceeds 75% of total equity. Debt in excess of this level was considered to be high, and companies were obliged to complete an additional assessment to explain their debt levels.[29] Under proposed legislation, the threshold would be reduced to 60% to disincentivise this form of tax minimisation.

In our investigation of ASX200 companies, we found that:

- 60% of the ASX 200 had debt levels in excess of 75%.
- A further 14% of companies fell into the marginal category of between 60% and 75%.
- Just 26% of ASX 200 companies have debt levels that are not of some concern from a tax minimisation perspective.
- 58% of ASX200 companies reported losing 10% or more of their profits to financing costs.
- Ten companies reported losing more than 50% of their profits to financing costs. The majority of these same companies also had very high debt levels.

Recommendation:

6. **Australian companies should disclose all intra-group loans and the Tax Act should be amended to disallow all interest deductions on intra-group loans that are not established at arm's length.**

Corporate Disclosure Issues

Uncovering tax aggressive practices by Australian companies – as well as multinationals operating in Australia – is notoriously difficult largely due to the secretive and non-transparent nature of global financial transactions. Corporate accounting is by nature opaque and in this context of secrecy it is difficult to prove that a company is doing anything wrong. As US economist James S. Henry put it in 2012:

> *'The subterranean system that we are trying to measure is the economic equivalent of an astrophysical black hole. ... Unlike in the field of astrophysics, however, the invisibility here is fundamentally man-made. Private sector secrecy and the official government policies that protect it have placed most of the data that we need directly off limits – even though it is, in principle, readily available.'*[30]

While we would ideally have all of the facts relating to the apportionment of profit between the subsidiaries owned by Australian corporations, the reality is that we have to rely on the patchy, opaque and flawed data that we can access. The kind of data that would allow an objective assessment of tax practices of multinational corporations is not collected even by national tax authorities since the international tax system does not treat all the subsidiary parts of multinational corporations as a whole. Furthermore, the accounts produced for shareholders are opaque by design and are limited only by international financial reporting standards, which are often imprecise. These disclosure limitations mean that there are many unknowns about Australian multinational behaviours – including the full extent to which these corporations utilise secrecy jurisdictions.

Regulators thus often rely on information provided by whistleblowers to investigate tax crimes, as with the recent Luxembourg Leaks scandal. However, current whistleblower protection laws in Australia are inadequate, particularly in relation to how these laws are applied to employees in the private sector. A recent Transparency International and Blueprint for Free Speech report comparing whistleblower protection laws across the G20 found that while Australia has some of the most comprehensive whistleblower protection rules for the public sector, equivalent laws for the private sector are considerably weaker, with Australia ranking poorly compared to the rest of the G20 in this regard.[31]

This poses a significant barrier for accountants or other corporate employees who may be in possession of information relating to corruption, tax fraud or other crimes, yet may not feel confident that they would be protected in the event of disclosing such information to the ATO, ASIC or other relevant regulatory authorities.

ATO employees are also severely restricted in terms of publicly discussing the tax payments and practices of companies under investigation. ATO policies should be reviewed to make sure that ATO efforts are not compromised when challenging well-resourced corporations unencumbered by such restrictions.

Recommendation:

7. **Existing whistleblower protection laws should be strengthened and extended to cover private sector employees in order to encourage exposure and prosecution of corporate tax evasion, fraud and other white collar crimes.**

The Need for Country-by-Country Reporting

As should already be evident from this discussion, transparency is a key factor in responding to tax avoidance. Companies are currently not required to disclose substantive details about their global operations and gaining any conclusive evidence on the usage of secrecy jurisdictions has proved difficult for governments as well as third-party, non-government sector organisations. Action points 11-13 of the OECD *Action Plan on Base Erosion & Profit Shifting* address these issues and propose the development of new methods of data collection to help facilitate transparency within international taxation arrangements and to assist governments to monitor the extent of base erosion and profit shifting (BEPS) occurring within their jurisdictions.

A proposal already supported by the OECD is country-by-country reporting. The idea behind this transparency initiative is that multinational corporations would be required to publish data on a country-by-country basis to show genuine information about the profits, taxes and sales generated in each country in which they operate. The principles behind country-by-country reporting were originally designed by the Tax Justice Network before being adopted by the OECD in September 2014.

The Tax Justice Network suggests that companies be required to disclose the following information under country-by-country reporting[32]:

1. The name of each country in which it operates.
2. The names of all its subsidiaries and affiliates in each country in which it operates.
3. The performance of each subsidiary and affiliate in every country in which it operates, without exception.
4. The tax charge included in its accounts of each subsidiary and affiliate in each country in which it operates.
5. Details of the cost and net book value of its fixed assets located in each country in which it operates.
6. Details of its gross and net assets for each country in which it operates.

Following the OECD adoption of country-by-country reporting, the UK HMRC has also recently adopted mandatory country-by-country reporting for all multinationals registered in the UK. The measure will require companies to provide the following information for each tax jurisdiction in which the company operates:

- Amount of revenue, profit before income tax and income tax paid and accrued; and

- Their total employment, capital, retained earnings and tangible assets.[33]

Country-by-country reporting is designed to allow governments and national taxation authorities to have greater oversight over the business activities of multinational companies in order to determine which part of their profits become taxable in which jurisdiction. By itself, country-by-country reporting does not deter the use of secrecy jurisdiction subsidiaries or the shifting of profits to low- or no-tax jurisdictions. But it should provide a level of information about these activities that will help governments determine whether companies are engaging in aggressive tax planning.

Additionally, any country-by-country reports filed by Australian corporations should be open and transparent to allow for public scrutiny of corporate behaviour. Consideration should be given to whether these standards should be made a mandatory part of Australian Financial Reporting Standards.

Recommendation:

8. **Australian corporations should be required to produce detailed country-by-country reports that disclose the following information:**
    i. **The name of each country in which it operates.**
    ii. **The names of all its subsidiaries and affiliates in each country in which it operates.**
    iii. **The performance of each subsidiary and affiliate in every country in which it operates, without exception.**
    iv. **The tax charge included in its accounts of each subsidiary and affiliate in each country in which it operates.**
    v. **Details of the cost and net book value of its fixed assets located in each country in which it operates.**
    vi. **Details of its gross and net assets for each country in which it operates.**

Trust Structures and Stapled Securities

There are currently 53 Australian Real Estate Investment Trusts (A-REITs) listed on the Australian stock exchange. According to recent estimates by the European Public Real Estate Association, A-REITs represent 8.28% of the total global REIT market.[34] Real estate is one of Australia's most successful sectors, with 18 out of 53 A-REITs listed on the ASX200 having combined total assets worth $135.7 billion in 2013.

Despite this, the real estate sector companies listed in the ASX200 have the lowest combined effective tax rate of all ASX200 industry sectors. As highlighted in *Who Pays for our Common Wealth*, the main reason for this is because the sector relies heavily on the use of trusts which under Australian taxation law are not required to pay company tax. Instead, the profits are distributed to shareholders, who are then required to pay tax. While in a formal sense this arrangement means that tax should be applied fairly at the individual shareholder level, there are a number of reasons why these structures should be of concern from a tax avoidance perspective.

The Australian real estate sector is relatively unique for its use of an investment structure known as stapled securities. The Australian Centre for Financial Studies defines stapled securities in the following way: 'Stapled Securities involve the stapling together of separate securities such as a share in a company and a unit in a trust which cannot be traded separately.'[35] In general, an A-REIT with a stapled structure will involve a trust which owns all of the group's assets and a company that is

tasked with managing the assets. Shareholders thus own a share in both units, but usually only have oversight over the managing company.

According to the ASX, 47% of A-REITs are stapled securities; moreover, 13 out of 18 (or 72%) ASX 200 real estate companies are listed stapled securities.[36] Stapled securities first emerged in the Australian real estate sector in the 1970s and have grown exponentially since then. The Property Council of Australia recently argued that stapled securities allowed the Australian real estate sector to 'maintain its competitive edge and remain strong in market downturns.' They allege that stapled securities make the Australian property sector 'one of the most advanced and equitable systems,' and the envy of the rest of the world.[37]

Despite this, there is little evidence that other countries have any interest in replicating the Australian stapled securities market. While these structures existed previously in other markets, most countries have sought to limit or abolish them altogether. Stapled securities have been disallowed on the US stock exchange since 1984, while Canada recently introduced legislation to prevent the stapling of real estate investment trusts in 2011.

The primary reason countries such as Canada and the US disallow stapled securities is that they offer companies the opportunity to engage in tax arbitrage. Consequently, the only jurisdictions other than Australia that continue to retain an interest in stapled securities are Malaysia, Singapore and Hong Kong – all of which are known to engage in tax sheltering to varying extents.

Stapled securities offer considerable tax advantages for a variety of reasons. The structure allows the group to consolidate debts into the taxable portion of the group – the company – while consolidating both assets and profits into the trust, which is not subject to taxation. This can occur through intra-group trading, where the trust leases its assets to the company in exchange for rent. Structures of this nature account for the extremely low effective tax rates of these companies.

The Australian Centre for Financial Studies has warned that stapled securities are particularly non-transparent structures, which do not offer either shareholders or regulators genuine insight into the kind of intra-group trading that takes place. Thus, stapled securities are also of concern to investors as they offer the opportunity for managers of the company 'to extract wealth from investors and consolidate their control over the business.'[38] They argue that this can occur through elevated management fees, which might then be apportioned to the managers of the company through high executive director salaries and bonuses.

Moreover, there are questions as to how much tax is raised through the taxation of stapled security dividends. This becomes a particular concern for the Australian tax base if there is considerable foreign investment in Australian stapled securities, since foreign investors are not subject to the same taxation as domestic investors. Furthermore, even domestic investors are able to utilise structures like family trusts and self-managed superfunds to reduce or limit their taxable income.

The Property Council of Australia claims that managed investment structures such as stapled securities 'were created to ensure small investors had the same opportunities to invest in property as high net worth individuals and corporations.'[39] Despite this, institutional investors account for approximately 70% of the ownership of AREITs.[40] Thus, the true beneficiaries of these structures are not individual shareholders.

At present, it is extremely difficult to determine exactly who the beneficial owners of AREIT's are, due to the opaque and complex nature of beneficial ownership registries. For this reason, the exact impact of stapled securities on the Australian tax base could be better calculated if beneficial

ownership registries were open to greater public oversight. It is highly questionable whether the amount of tax raised by the taxation of shareholders in trusts and stapled securities is equivalent to other structures that also attract tax at the company level. For this reason, we consider these structures to be tax aggressive.

According to the Australian Centre for Financial Studies, there is no real justification for the continued utilisation of stapled security structures, since it is evident that companies that do not use these structures are nevertheless competitive within the real estate sector. Furthermore, they argue that removing stapled structures would not disadvantage domestic investors and would limit the capacity for tax arbitrage and rent extraction at the managerial level. They thus see the need for further investigation into the future of stapled securities in the Australian market:

> 'Operators of stapled structures would no doubt argue that there are real efficiencies associated with stapling. But whether any such perceived benefits are truly social benefits, private benefits at the expense of taxpayers, or involve wealth transfers to operators of such structures and insiders at the expense of third party investors, has not been rigorously investigated.'[41]

Recommendation :

9. **The Australian Government should commission an investigation into the effect of stapled securities on the Australian tax base, and consider disallowing these structures in line with current international standards.**

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Additional United Voice Submission:
Senate Standing Committee on Economics
Inquiry into Corporate Tax Avoidance
April 2015

Following the hearings for this inquiry from the 8-22nd of April, United Voice provides this submission in addition to our original submission (submission 78).

The hearings to this inquiry have made clear that corporate tax avoidance is having a major impact on government revenue in Australia.

While some corporations were more forthcoming than others during the inquiry, transparency around corporate tax practices remains highly problematic. This is highlighted by the fact that Treasury and the ATO are unable to place a dollar figure on the amount of money lost to Australia as a result of corporate tax avoidance.

Individual Australians, small businesses and corporations who do pay their fair share all deserve to know that they can have faith in our tax system.

In addition to the recommendations made in our initial submission to this inquiry, United Voice calls on the Committee to consider the following recommendations:

- **Expanding the Federal Government's lobbyist register to include major accounting and consultancy firms;**
- **Introduction of an automatic trigger so that companies under investigation by the ATO for tax minimisation practices are automatically named if the amount in dispute is over $100 million;**
- **Introduction of a public register of settlements in cases of multinational tax avoidance in order to establish consistency and a level playing field; and**
- **Mandatory reporting by listed companies, and all companies with annual revenues over $100 million, of any tax credits received that lower a company's effective tax rate.**

Expanding the lobbyist register

Legitimate concerns have been raised during this inquiry about the relationship between major accounting and consultancy firms and the ATO and Treasury.

Australia has had huge success at the federal level in preventing corrupt lobbying activities through the use of a lobbyist register. Expanding the register would increase the integrity of our law-making and compliance system, with a particular focus on tax and revenue arrangements.

By publicly disclosing the nature of relationships with government, the public - and competing consulting and accounting firms - can be assured that there is a clear disclosure of their engagement with government.

Specifically, this policy would see:

- A new register created to track all consultants who have interactions with government;
- Disclosure of their clients and the names of consultants who are engaging with government;
- Disclosure as to whether that consultant had been previously employed by government and in what department or ministerial office; and
- A similar requirement to stop individuals crossing between consultancy and government work to that which exists for ministerial staff and public service staff in the Lobbying Code of Conduct. Namely, creating a similar requirement as in the Lobbyist code in section 7.2: *"Persons who were, after 1 July 2008, employed in the Offices of Ministers or Parliamentary Secretaries under the* Members of Parliament (Staff) Act 1984*at Adviser level and above, members of the Australian Defence Force at Colonel level or above (or equivalent), and Agency Heads or persons employed under the* Public Service Act 1999 *in the Senior Executive Service (or equivalent), shall not, for a period of 12 months after they cease their employment, engage in lobbying activities relating to any matter that they had official dealings with in their last 12 months of employment."*

Greater transparency around companies under investigation

Australians need to have faith in our tax system. The lack of transparency around corporate tax practices has been a defining feature of this inquiry and should be addressed. As well as the recommendations contained in United Voice's initial submission to this inquiry, the ATO should be required to publish the names of large companies who are under investigation for significant tax minimisation practices. The lifting of privacy protections for corporations once a tax dispute is large enough to have a significant budgetary impact has the potential to deter tax avoidance practices. At some point, public interest concerns must override the privacy of corporate information.

This could be achieved via the introduction of an automatic trigger, so that companies with tax disputes valued at more than $100 million who are under investigation by the ATO for tax minimisation practices are automatically named by the ATO.

Those corporations would then have the option of disclosing further information as to their tax practice in order to satisfy the public that they are conducting their business operations in a manner that is in line with community expectations.

The ATO would be required to publish the name of companies if they met the following criteria:

- The company is under investigation by the ATO for base erosion and profit shifting and/or tax minimisation; And
- The amount being investigated is likely to be equal to or greater than $100 million.

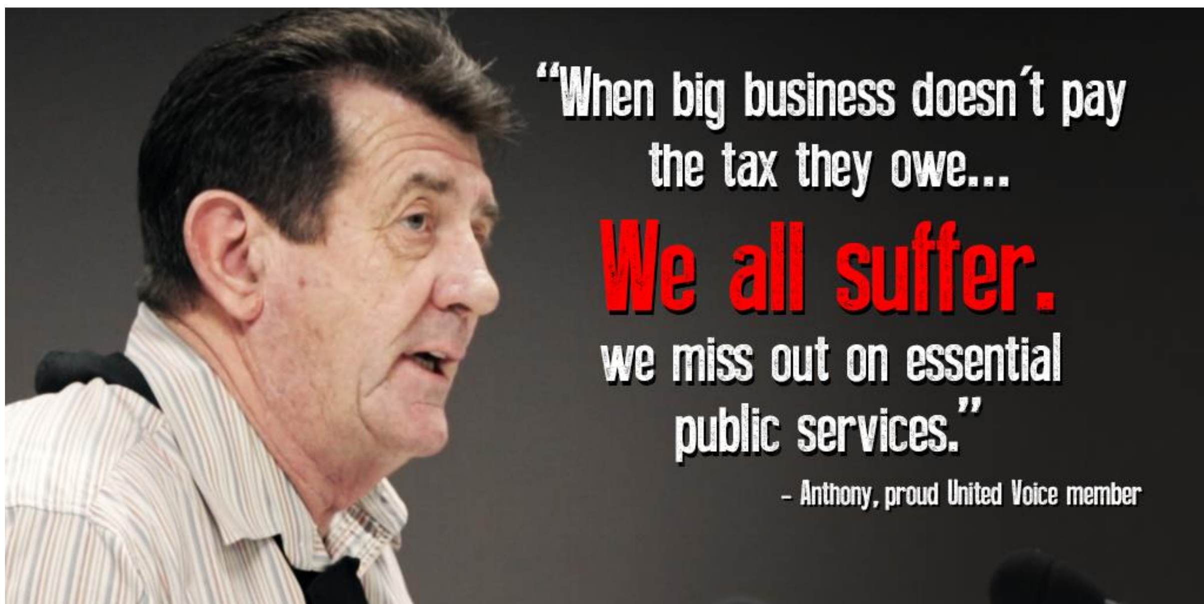
At the conclusion of the investigation, the outcome should also be reported on the ATO website.

Introduction of a public register of settlements

To encourage a transparent and more accountable corporate environment, the ATO should be required to disclose in a public register those corporations who have agreed to settlements valued at over $5 million. A register would allow the public to see which companies had potentially breached Australian tax laws and to what extent. The disclosure of these corporations would be another deterrent to aggressive tax practices.

It would also help to create a level playing field so that taxpayers would have greater access to information and receive the same treatment regardless of the resources they have at their disposal to challenge ATO rulings. Companies which do the right thing should be publicly distinguished from those who do not, and a public register of settlements would have that effect.

The ATO has a precedent of publishing Private Binding Rulings, but has maintained the anonymity of companies involved (ATO Interpretive Decisions). At the very least, the ATO should publish the details of corporate tax settlements in the same way, by giving the relevant facts of the case, the sum involved, the legal issues and arguments in contention, the relevant law, the basis upon which settlement was reached and the approval and authorisation process. This would still allow for a greater level of transparency and public understanding into how settlements are reached.



Mandatory reporting of tax credits received

Listed companies, and all companies with annual revenues over $100 million, should be required to disclose the amount and type of any tax credits they receive that impact on the organisation's effective tax rate. While there may be legitimate reasons for having an effective tax rate that is lower than the statutory rate, the public has a right to know why this is.

While this information is already disclosed to the ATO, it should be made public in a clear and explicit way. This is another example of a lack of transparency that hurts public confidence and makes it difficult to distinguish those companies who minimise tax legitimately from those who abuse the system to avoid paying tax. Shareholders and the public also have a right to see how these tax credits are being used to allow for a more robust public policy debate about tax policy in Australia.

United Voice welcomes this important inquiry and the opportunity to make an additional submission.

For more information on this submission, please contact Jacqueline Woods via jacqui.woods@unitedvoice.org.au or (02) 8204 3000.

David O'Byrne
National Secretary