



31 May 2013

Principal Advisor
Corporate and International Taxation Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via Email: bepe@treasury.gov.au

Dear Sir/Madam,

Submission on Issues Paper entitled “Implications of the Modern Economy for the Taxation of Multinational Enterprises”

The Construction, Forestry, Mining and Energy Union (Mining and Energy Division) (“CFMEU”) welcomes the opportunity to provide a brief response to Treasury’s Issues Paper entitled “Implications of the Modern Economy for the Taxation of Multinational Enterprises” (“the Issues Paper”).

CFMEU Mining & Energy is a member of the Publish What You Pay coalition, and endorses the submission made by PWYP in response to the Issues Paper.

From the outset, the CFMEU indicates its broad support of the thrust of the Issues Paper. The issues identified are important to the integrity of Australia’s taxation system and require prompt attention and action. Whilst we support the general thrust of the Issues Paper, we make the following additional comments.

The CFMEU has long been concerned that multinational enterprises (“MNEs”) and, in particular, large mining and resources MNEs operating in Australia pay their fair share of corporate tax.

In addition, we support the full disclosure of how much corporate tax MNEs pay in Australia and, indeed, how much they pay worldwide. We note that the U.S and European Union have both recently acted to require extractive industry MNEs to disclose their worldwide taxation payments to governments on a country-by-country and project-by-project basis. We believe Australia should follow these examples – notably that of the EU case where application of the new rules is based on company size rather than being publicly listed.

We note the Australian Government is considering measures around the disclosure of taxes paid by large enterprises in general.¹ It will be integral to national and international efforts to address the matters raised in the Issues Paper that large and multinational enterprises face much greater disclosure of the taxes they pay in Australia and globally.

We also support the full disclosure of all tax concessions that MNEs receive from the Federal Government in the form of, for example, fuel tax credits, R&D allowances and accelerated depreciation.

Base Erosion and Profit Shifting

In our assessment, Base Erosion and Profit Shifting (“BEPS”) is a significant problem for Australia’s corporate tax system. The revelations involving technology companies Google² and Apple³ using the elaborate “Double Irish Dutch Sandwich” mechanism of channelling profits through a series of subsidiary companies in different tax jurisdictions - principally Ireland and

¹ Assistant Treasurer David Bradbury, 4 February 2013, Media release “Greater transparency of tax paid by large and multinational businesses”. Canberra

²See: www.afr.com/p/technology/google_still_tax_target_even_as_EJfW1MB26hDhgj0Y0ajuL

³See: www.guardian.co.uk/world/2013/may/28/australian-companies-forced-disclose-tax

Netherlands - to reduce their corporate tax obligations in Australia (and elsewhere) are a case in point.

Similarly, thin capitalisation, or the inappropriate allocation of debt in order to maximise profits in low tax jurisdictions, is a threat to the integrity and sustainability of the Australian tax system. The net effect of this “thin capitalisation” approach is that Australian-based subsidiaries end up carrying substantial debt on their balance sheets (generally owed to the parent company) that enable them to make large claims for tax-deductibility of interest payments, with those tax-free interest payments becoming the income of the parent company in another – often low-tax – jurisdiction.

We note the recent revelations involving Swiss-based Glencore Xstrata, wherein it used an Australian-based subsidiary as the vehicle for its \$A19 billion debt-fuelled takeover of Canadian nickel miner Falconbridge in 2006, resulting in a dispute with the Australian Tax Office over a number of years.⁴

We commend the Federal Government’s 2013 budget initiative directed at reducing the capacity of MNEs to load up an Australian subsidiary with high debt levels and thereby reduce tax payable in Australia. However, the scope of the reform – reducing the maximum debt to equity ratio from 3:1 to 1.5:1 – is modest and we suggest that there is scope for further tightening.

Future Directions

The problem of “BEPS” – Base Erosion and Profit Shifting - seems unlikely to be resolved in the short time to medium term. We note the recent public relations offensive by the Irish Government against accusations in the US Senate - arising out the revelations about Apple Inc’s worldwide tax minimisation strategies - that Ireland is effectively a tax haven. This is cause

⁴Chambers, Matt, “Xstrata cornered by tax office for loading local debt”, *The Australian*, 17 May 2013, p17

for major concern as it suggests a reluctance to move, even by some OECD nations, to effectively tax MNEs.⁵

We believe that it is a matter of significant importance to Australia that other countries are not ensuring that MNEs are paying their fair share of corporate tax in the tax jurisdictions within which they operate. Low-tax jurisdictions not only deprive Australia of tax income, they lower the tax income of governments worldwide at a time when public sector budgets face large and often structural deficits. We are of the view that these countries must be actively encouraged to exercise their right to tax MNEs appropriately within the international taxation framework or Australia must act unilaterally, or perhaps in concert with other like-minded or concerned countries, such as to the USA, to protect against BEPS.

A Unitary Taxation Approach?

Ultimately, we believe BEPS is a symptom of significant gaps in the international taxation system. There is an urgent need for reform. The CFMEU believes that a solution to BEPS and other problems with the international taxation system may lie in a shift towards unitary taxation of MNEs.⁶ In other words, MNEs must be treated as if they were a single entity, producing consolidated accounts presenting their economic activity and income by country/jurisdiction, and with proportional allocation of profits to those countries. They would then pay company tax proportionate to their genuine business activity in a particular tax jurisdiction. The current notion that an MNE, for taxation purposes, is a loose collection of entities operating in different countries and therefore should be taxed accordingly is extremely problematic and serves only to encourage the deployment of elaborate tax minimisation mechanisms such as the Double Irish Dutch Sandwich”.

⁵See, <http://www.reuters.com/article/2013/05/27/ireland-tax-idUSL5N0E822S20130527>

⁶See, for example, Picciotto, S, “Towards Unitary Taxation of Transnational Corporations”, Tax Justice Network, December 2012 and the sources identified therein.

Whilst unitary taxation may be not a “magic bullet” to the problems of the international taxation system (e.g. defining the location of services provided over the internet can be arbitrary), we strongly encourage Treasury to review the literature and formulate a position. In our view, Australia would be well placed as Chair of the G20 in 2014 to advance the case for systematic reform to achieve effective taxation of Multinational Enterprises, including a unitary taxation approach.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Tony Maher', with a stylized, cursive script.

Tony Maher

General President