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24 April 2013

General Manager
Tax System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam,

Improving the Transparency of Australia's Business Tax System

Godfrey Hirst Australia Pty Ltd (Godfrey Hirst) is Australia's largest carpet manufacturer with turnover exceeding $300m. Privately owned, Godfrey Hirst employs over 800 employees and continues to proudly undertake textile manufacturing in Australia, while so many of its competitors have moved manufacturing activities offshore.

Even though the paper appears largely focussed on multinationals, having been developed following consultation with the Specialist Reference Group on *Ways to Address Tax Minimisation of Multinational Enterprises,* there are many privately owned Australian businesses, such as ourselves, who will fall within the net of its proposals.

We are concerned that the proposal contains serious flaws both in terms of its stated policy objectives and the means to achieve them. For the Australian community to have confidence in the tax system, it is believed privacy and confidentiality about a taxpayer's tax affairs should be a paramount factor. We would expect that overseas corporations investing in Australia would be of the same view and are concerned that these measures could have a detrimental impact on the Australian economy.

Generally it is unclear how the information to be disclosed will enable the "the public to better understand the corporate tax system and engage in policy debates"? The information (other than the Petroleum Resource Rent Tax (PRRT) or Minerals Resource Rent Tax (MRRT) information) comes without any context to allow interpretation.

The Discussion Paper recognises that it is important to maintain privacy around the affairs of individuals, but does not appear to recognise that privacy is likely to be just as important to corporations as it is to individuals, particularly for corporations that are family owned. Privacy of a person's tax affairs has been recognised as important:

- to encourage full disclosure by a taxpayer;
- to ensure a taxpayer's private affairs are not made public, there being no good public policy reason why a person's income or tax obligations should be known to others; and
- for social cohesion.

Even though the proposed disclosures apply to corporate tax entities, for those which are privately and closely held it will be an easy task for commentators to apply the tax paid (or not paid) to the owners. Publication of the data will give information that could be detrimental to their shareholders, including to their safety.

There are concerns disclosure rules of this nature may lead to distortion, leading to entities structuring their affairs so that they keep below the $100m threshold and discouraging investment by some foreign entities which do not want to be exposed to the risk of adverse

publicity about their tax affairs, even where they comply with Australian tax laws.

It is noted that Government policy in privacy sensitive areas (i.e. health, education, social welfare) has developed and has been implemented without private information being made public. There is no compelling reason why private tax information needs to be disclosed. The proposal would actually reduce transparency and misinform public debate by not providing the published figures with any context. Publishing the selected data will not help the Government assess the extent of its tax loss problem. It already has access to sufficient data for this or, if it does not, it could introduce changes to the law that would make the data available on a confidential basis.

The regulatory approach the Australian Taxation Office (ATO) introduced in the early 2000s following a previously quite aggressive punitive approach shows what can be done to encourage compliance and to understand aggressive tax planning. Central to the ATO's approach was that, to ensure long terms compliance, **co-operation** rather than punishment was the key. The current 'naming and shaming' proposal is punishment. Humiliation will only weaken respect for compliance with the law.

If the Government is concerned about multinationals not paying their fair share of tax then the sensible thing for the Government to do would be to wait for the Organisation for Economic Co-operation and Development (OECD) to deliver their report on Base Erosion and Profit Shifting in June later this year and be part of a global solution to counter any mischiefs found by the OECD; rather than imposing on the privacy all Australian businesses in the manner proposed.

In respect to the specific proposals it is noted as follows:

Transparency of tax payable by large and multinational businesses

The objective of this proposal is to enable the public to better understand the corporate tax system and engage in tax policy debates, as well as to discourage aggressive tax minimisation practices by large corporate entities.

We are concerned that such information may well lead to the public drawing incorrect conclusions, and automatically assuming anomalies between total income and taxable income are due to improper aggressive tax minimisation – causing damage to a company's reputation and adversely impact on its operations. The fact the Discussion Paper had to include a note about C1 Limited and explain this anomaly shows how easy this is to occur from the information the Assistant Treasurer suggests the ATO should publish. This risk is even greater for private companies when information may be misconstrued.

The current tax regime includes a number of tax incentives for entities to undertake certain activities consistent with Government policies. It would be disappointing for company's undertaking activities of this nature to be tarred with a brush alleging inappropriate taxation minimisation.

Taxpayers can only be taxed to the extent that the law requires. Corporations and therefore their directors are obliged to ensure that they only pay the tax they are obliged to pay. To do otherwise is to risk directors being in breach of their duties to their company and its shareholders.

The policy of naming and thereby shaming certain taxpayers over the amount of tax they pay is based on the (false) premise that even though lawful, the taxpayer must not adopt that lawful course of tax minimization. Such an approach can only lead to greater uncertainty in tax matters: it will not matter what is lawful, but what various interests groups, or the Government of the day believes is acceptable. An action today which is lawful and acceptable may remain lawful but then become unacceptable to the interest groups, or to the Government, when tax revenues or spending initiatives are under pressure. What tax is payable is a matter for

parliament not for the Executive or through the power of lobby or special interest groups.

It is unfair to judge the tax 'morality' of a corporate tax entity without understanding its contribution in other areas: other taxes paid (payroll and other state taxes); the level of employment; the contribution to the community and the economy. The Government makes no attempt to define what a "fair share" is or to quantify the size of the problem it perceives.

Where a corporate tax entity is forced to adopt what is seen by others as socially acceptable taxpaying, it may be putting at risk its competitive advantage when compared with those firms which do not comply with such informal tax policy requirements. There will be a distortion of the "level playing field". Tax is a cost of business and its amount affects a firm's available capital to compete and expand and its ability to increase shareholder value.

Based on the design of the proposed legislation, the Government's purpose is to use extra-legal methods to make targeted taxpayers pay more tax than they are legally obliged to. By publishing extremely limited information selected specifically to put the targeted taxpayers in the worst possible light, it invites (incites) public action against the target taxpayers and potentially those associated with them. There are national and international examples of such actions against companies involving physical damage, reputational damage and commercial boycotts.

We also doubt whether the proposed disclosure would discourage aggressive tax minimisation practices, as if a company moves profit to a low tax jurisdiction, the income would be derived by a different legal entity so the Australian company's accounting income would approximate it taxable income – so failing to target the behaviour the Discussion Paper is purporting to target.

Although example three on page four addresses the second proposal, the example highlights the problem with the first proposal, requiring the Commissioner to publish details of how much PRRT and MRRT a large company pays - providing a company's competitors information they would not normally have access to.

Publishing aggregate collections for each Commonwealth tax

The objective of this proposal is to enable better public disclosure of aggregate tax revenue collections, even when the identity of particular entities could potentially be deduced.

We are concerned, as shown by example three on page four, as to the violation of an entity's privacy in respect to its tax affairs.

Enhanced information sharing between Government agencies

The objective of this proposal is to build on existing information sharing arrangements and enable greater information sharing between the ATO and the Department of the Treasury with respect to foreign acquisition and investment decisions affecting Australia.

We have no comment in respect to this proposal.

We thank you for the opportunity to make this submission.

Yours faithfully,

R. G. McKendrick
Chairman and Chief Executive Officer