



Submission Free TV Australia

Digital economy and Australia's corporate tax system

Treasury Discussion Paper

November 2018

1. Summary

Free TV Australia thanks the Treasury for the opportunity to make this submission on the digital economy and Australia’s corporate tax system discussion paper.

On behalf of Australia’s commercial free-to-air broadcasters, Free TV has been a strong and consistent supporter of the actions that successive Governments have taken to address the imbalance in the taxation arrangements that apply in the highly competitive media sector. This includes the Multinational Anti-Avoidance Law (MAAL), Diverted Profits Tax and the GST reforms to cover digital products.

An important part of addressing this imbalance was the removal of the outdated broadcast licence fee—which was essentially a revenue tax on commercial free-to-air broadcasters that did not apply to any of our new entrant competitors.

We welcome the Government’s consideration of further measures to build on these successful reforms that have so far seen \$7 billion of revenue recognised in Australia by the dominant digital players who previously employed a range of techniques to avoid their tax obligations.

The discussion paper poses complex questions around how the international tax rules could be amended on who should be captured by new taxation arrangements (the nexus rules) and separately how these taxation obligations should be calculated. In relation to the nexus rules, Free TV considers that the focus of future reforms should be on companies that have a significant economic presence, but a proportionally small physical presence in Australia. This solution is directly focussed on the identified problem—highly digital global companies avoiding their tax obligations.

In terms of how these tax obligations could be calculated, Free TV considers there is merit in further considering the OECD’s 2015 suggestion of using a benchmark return to calculate a deemed net income. We consider that a credible benchmark industry-specific profit percentage could be derived from examining prevailing commissions and margins in the advertising sector.

However, ahead of an international agreement on these measures, we caution against pursuing interim measures, such as a digital services tax. We are concerned that any such tax has the potential to capture services provided by some of our members. This would amount to double taxation and would serve as a disincentive for further innovation by Australian based businesses.

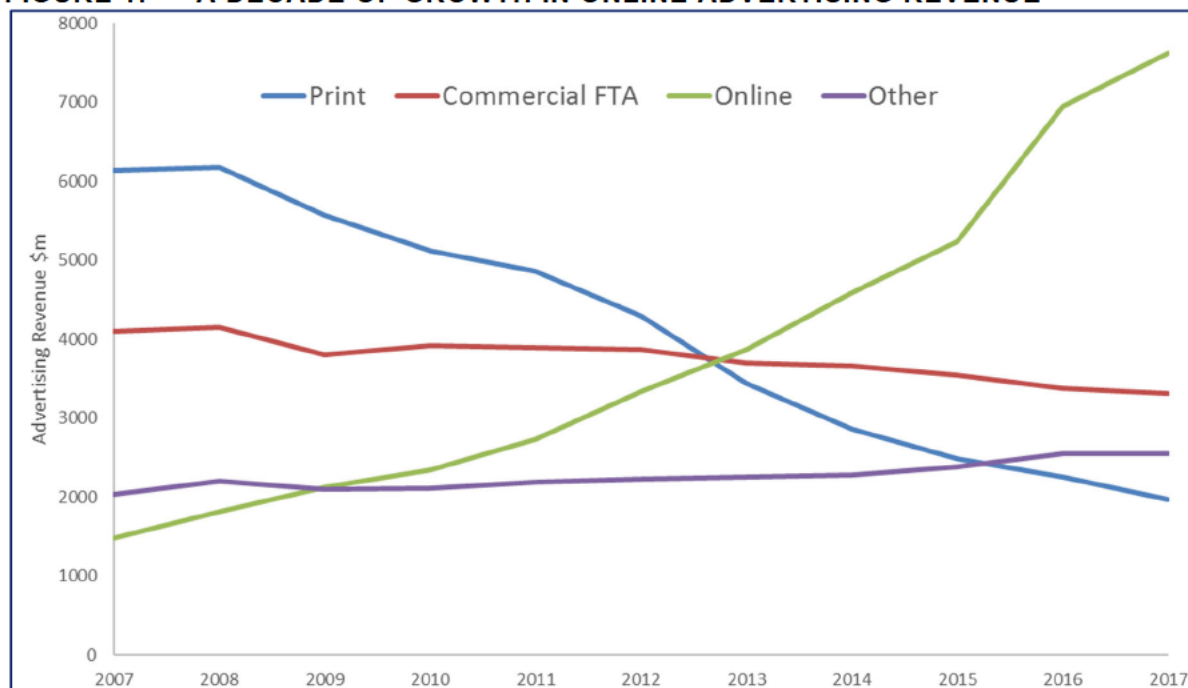
2. The impact of the digital giants on Australia’s economy

2.1. Growth in digital revenues

Over the last decade, digital advertising revenue has grown by over 400 per cent in real terms. However, total expenditure on advertising in Australia has been relatively static over the same period.

What has been observed is a structural shift in advertising revenue towards the online players, including the dominant Google and Facebook. Given that the overall “size of the pie” has not changed, all of this growth has come at the expense of local media companies. While the most dramatic decline has been felt by the print news sector, commercial television has experienced flat or declining revenues over the last decade.

FIGURE 1: A DECADE OF GROWTH IN ONLINE ADVERTISING REVENUE



Source: CEASA, 2017

Clearly this shift in advertising revenues has had a dramatic impact on local media companies who rely on advertising revenues to invest in local content, services and jobs. However, it is also a significant problem for the Australian economy as this also represents a shift away from traditional media companies that transparently pay corporate income tax, towards digital giants who employ a range of techniques to avoid their Australian tax liabilities.

This is particularly a problem for the Australian economy as corporate income tax makes up almost a quarter of all Commonwealth revenue, as noted in the discussion paper.

2.2. Our importance to the Australian economy

The value of commercial free-to-air television to the Australian public remains high. At no cost to the public, we provide a diverse range of channels and content across a broad range of genres, as well as rich online and mobile offerings. These programs are provided free of charge into 99% of Australian households and commercial television reaches 13 million Australians on average every day.

In stark contrast to the digital players, we invest \$1.6 billion every year in local content. Our industry is proudly the largest producer and commissioner of Australian content, responsible for \$6 out of every \$10 spent on domestic content. The latest financial reports by the ACMA show that local content investment continues to grow and now stands at 80% of all content spending.¹

This investment puts us at the centre of the content production eco-system in Australia, supporting over 15,000 jobs and invests a total of \$2.8 billion each year into the Australian economy.² Exports of Australian television productions have been valued by Deloitte at \$252 million a year, with a further \$725 million a year coming from related tourism.³

¹ <https://www.acma.gov.au/theACMA/Library/Industry-library/Broadcasting/broadcasting-financial-results-report>

² Venture Consulting, The Value of Free TV, May 2015.

³ Deloitte Access Economics, 2016, "What are our stories worth? Measuring the economic and cultural value of Australia's screen sector".

The lack of a level playing field for corporate income tax places commercial free-to-air broadcasters at a competitive disadvantage compared to the digital giants. This places our contribution to the Australian economy at risk, together with our investment in local services and jobs.

3. Supports measures to level the playing field

3.1. Free TV supported previous reforms

Free TV welcomes the Australian Government's efforts to address the imbalance in the taxation of the global digital players who have the ability to structure themselves to avoid paying tax in Australia.

In particular, we have publicly congratulated the Government for the introduction of the Diverted Profits Tax in 2017. We also submitted to the Treasury's Tax White Paper Task Force in 2015, noting our support for the:

- *Tax Laws Amendment (Tax Integrity Multinational Anti-Avoidance Law) Bill 2015* to stop multinational entities using artificial or contrived arrangements to avoid a taxable presence in Australia;
- G20 OECD global standard and action plan to combat offshore tax evasion; and
- extension of the GST to offshore intangible supplies such as digital content, games and software, as part of the 2015-16 budget.

3.2. Agree with the principles underlying Treasury's discussion paper

Consistent with our previous support for levelling the taxation framework, Free TV appreciates the principles that underpin the Treasury discussion paper. We continue to support further measures that would appropriately tax businesses that have a significant economic presence in Australia, while having a limited physical presence.

For example, as noted in the discussion paper, the OECD has previously suggested a possible future approach could be to define a "virtual" physical establishment and estimate taxable domestic profit by applying a benchmark return on domestic revenue.

While recognising the challenge of establishing a benchmark return, Free TV notes that the vast majority of the revenue that accrues to significant digital players like Google and Facebook comes from digital advertising. As such, while these businesses may be large and complex, the majority of the taxable income is drawn from a market where industry standard commissions and returns can be readily ascertained.

A more significant challenge is determining the rules for which classes of business should be captured by such a framework (the nexus rules). We note the various approaches to this problem explained in the discussion paper and the potential for reforms to extend beyond highly digitised businesses and apply economy-wide.

In our view there is justification for applying a bespoke taxation framework for highly digital businesses who lack a significant physical presence. Ultimately, the key aim of any such measures is to ensure that these digital businesses face tax liabilities as if they were earning revenue from Australian consumers, while facing competitive supply input costs. Moving towards an economy-wide "significant economic presence" test that extends beyond highly digitised businesses risks creating a complex and administratively costly framework for all businesses, including those that are

already paying Australian corporate income tax. Therefore, our view is that the relevant threshold should include some measure of significant physical presence relative to the size of Australian based revenue to ensure that any further reforms are appropriately targeted.

4. The need for caution on a digital services tax

4.1. Local businesses have invested heavily in digital services

Free TV's strong preference is for the Government to focus on further measures to estimate the Australian based profits of digital players such as Google and Facebook, as discussed above.

We do not currently support interim measures such as the digital services tax. Many companies who are based in Australia, employ thousands of Australians and invest in local services also provide digital services, including digital advertising.

Given the ambiguous discussion of "user-generated value" in the discussion paper, we are concerned that the digital services provided by some of our members could be captured. This would undermine their significant investment in these services and amount to reimposing double taxation on commercial free-to-air broadcasters.

4.2. Our experience with revenue-based taxation

From the 1960s to 2017, commercial free-to-air broadcasters paid a broadcast licence fee, based on a percentage of advertising revenue. This amount was levied on top of the corporate income tax payments.

In 2017, this revenue-based tax measure was removed, in favour of an administrative charge for accessing spectrum allocated to broadcasting services. This reform was overdue considering the seismic shift in the media landscape that had occurred over the last decade and the increased competition from new entrants that did not pay the licence fee, avoided corporate income tax and the GST on subscriptions. As discussed above, we congratulate the Government on the steps it has taken to address these issues to date.

Inadvertently capturing the digital services of commercial free-to-air broadcasters would be a retrograde step, compared with the significant progress the Australian Government has made recently.

4.3. Risk greater than potential benefit

In our view, the risk that the tax may inadvertently capture the digital services of commercial free-to-air broadcasters outweighs any potential benefit from the imposition of the tax on our competitors. In the UK, the recently announced 2 per cent digital services tax is expected to raise less than [£400 million pounds annually](#).⁴ Assuming the same per capita take in Australia, this would equate to about A\$240 million annually in additional tax revenue for the Australian Government.

As set out in the discussion paper, the measures already undertaken by the Australian Government has seen \$7 billion worth of revenue brought back onshore by Facebook and Google. Free TV

⁴ The UK digital services tax is linked to revenue generated from the "participation" of UK users, but will apply only to search engines, social media platforms and online marketplaces. The UK Treasury advice specifically notes that it is not a "generalised tax on online advertising or the collection of data." Tax will only be payable of revenues "derived from these services to the extent they are performing one of the in-scope business models."

considers that further international cooperation should be sought to build on the success of these initiatives, rather than seeking to apply potentially costly interim taxation measures.

5. Recommendation

Free TV recommends that interim measures should not be adopted. Rather the Government should focus on the international cooperation required to adequately capture the net income of large digital players who lack a significant physical presence in Australia. We consider that it is possible to credibly determine a benchmark rate of return in order to derive net income for these businesses, as suggested by the OECD in 2015.