

Tax insights

Your tax affairs in the public spotlight (issue 2)



Snapshot

- Recent comments made by the Chair of the Senate Committee conducting the inquiry into corporate tax avoidance may indicate the areas of focus to be examined by the inquiry. In that regard, the comments suggest that the focus is on the tax system, rather than the behaviour of companies operating within the system.
- The comments made may be of particular interest for those companies currently considering their response to Senate Committee.

On 2 October 2014, the Senate established an inquiry into “corporate tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia”.

The Inquiry was referred to the Economics References Committee (the Senate Committee) to report by the first sitting day of June 2015 – see the recent Deloitte Tax Insights publication, *“Your tax affairs in the public spotlight”* which outlines the terms of reference of the Inquiry, highlights recent overseas experience with similar inquiries and notes that, in addition to a general invitation for submissions, the Senate Committee also sent invitations to specific companies and

organisations inviting them to make a submission to the inquiry.

Many companies are currently considering their response to the Senate Committee's invitation, and in that regard, comments made in a recent Senate debate are of interest, especially those made by Senator Dastyari, who is the chair of the Senate Committee conducting the Inquiry¹. The Senate debate was in respect of a motion, moved by Senator Christine Milne: "That, in the opinion of the Senate, the following is a matter of urgency: Treasurer's failure to tackle corporate tax evasion".

The members of the Economics References Committee are expected to be

- ALP - Senator Sam Dastyari (Chair)
- Libs - Senator Sean Edwards (Deputy Chair)
- ALP - Senator the Hon Kim Carr
- ALP - Senator Chris Ketter
- Nats - Senator Matthew Canavan
- Indep - Senator Nick Xenophon

Each of Senators Dastyari, Ketter and Edwards spoke during this debate

Senator Dastyari noted that there are two large, equally important but different taxation challenges to be considered:

- inbound multinational companies who structure their businesses, trading and other activities in such a way as to minimise any form of domestic taxation – Senator Dastyari said that this issue should be dealt with at an international level, through the G20 (ie, the OECD Base Erosion and Profit Shifting process), not by countries (including Australia) undertaking unilateral action, and
- secondly, "the taxation arrangements for Australian firms and how Australian firms are able to minimise their own taxation through either some form of international leveraging or a process of deductions and tax credits that allows them to minimise their tax liability". Whilst it is not

clear exactly what is being referred to in respect of "deductions and tax credits", he accepted a distinction between "legitimate tax exemptions / credits" – which he accepts "should and will always exist" – as opposed to such measures "being used as a vehicle for people minimising their taxation"

In respect of the report, Who pays for our Common Wealth? Tax Practices of the ASX 200, Senator Dastyari says that the report is not saying the companies referred to in the report are not operating within the law or paying the legally required amount of tax. Rather, what the report highlighted is that there "is a real disconnect at the moment between cash profits and taxable income". Senator Edwards was more critical of the report calling it a flawed "fiscal fiction".

Senator Dastyari goes on to note that the real question is "how we recreate the Australian tax system". This language seems to suggest that his focus is on the tax system rather than the behaviour of companies operating within the system. Further, he notes that the need for balance in respect of recreating the Australian tax system: "How do we change our rules to make sure that on one hand we are collecting the maximum amount of tax and the other hand are not risking – and we do not want to risk – driving business and profits overseas. That is a huge challenge."

Companies should continue to monitor developments prior to finalising any submission to the Inquiry.

Submissions to the Inquiry are due on 2 February 2015. The Senate Committee is making the submissions publicly available on the Australian Parliament website as they are lodged². It is not yet known when public hearings will be held. The Committee is due to report in June 2015.

¹ Senate Hansard, Monday 1 December 2014, page 58-68

² See Senate Economics References Committee – Corporate Tax Avoidance Inquiry – [Submissions received](#)

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