Australian Senate committee issues interim report on corporate tax avoidance

Executive summary

On 18 August 2015, the Australian Senate Economics Reference Committee, with a majority of opposition and non-government members, conducting an inquiry into Corporate Tax Avoidance (Senate inquiry) released its interim report. The report sets out 17 recommendations, including greater tax transparency measures directed at large corporations. Key recommendations include:

- Mandatory tax reporting code on large companies operating in Australia
- Maintaining existing Australian Taxation Office (ATO) public reporting of large company tax data
- ATO publication of the names of companies subject to tax avoidance settlements
- Large proprietary companies to lodge financial reports with Australian Securities and Investments Commission (ASIC)

The interim report does not represent government policy and the Government senators published a dissenting report. However, it is likely to influence the public debate on and perceptions of the taxation of large corporates and multinational corporations.

The Senate inquiry plans to hold additional hearings and receive further submissions. The interim report indicates that the final report will focus primarily on transfer pricing and profit shifting, with a secondary focus on excessive debt loading; avoiding permanent establishments in Australia; and tax haven use, with a 30 November 2015 provisional reporting date. This date follows the anticipated release of the Organisation for Economic Co-operation and Development (OECD) final Base Erosion and Profit Shifting (BEPS) deliverables and recommendations.
Large companies should start preparing for the ATO's public reporting of companies' tax information in December 2015 (affected companies will be notified from August 2015), pending any amendments to exclude Australian owned private companies.

Detailed discussion

**Senate Committee Interim Report**
The Senate inquiry's interim report, titled *You cannot tax what you cannot see* is available on the inquiry website. It sets out 17 recommendations following submissions received and hearings including various advocacy groups, large businesses and multinational entities operating in the digital services, mining, oil & gas and pharmaceuticals industries.

The interim report broadly covers:

- Evidence of tax avoidance and aggressive minimization
- Continuing multilateral (OECD-BEPS) efforts to combat tax avoidance and aggressive minimization
- Possible unilateral action to preserve Australia's revenue
- Capacity of Australian government agencies to collect corporate taxes

Some key recommendations are discussed below.

**Mandatory tax reporting code**
Recommendation 3 is that a mandatory tax reporting code be implemented within the same timeline as the proposed voluntary public transparency code. The recommendation proposes that Australian companies and Australian subsidiaries of multinationals with annual turnover exceeding a de minimis threshold amount would be required to publicly report on revenue, expenses, tax paid and tax benefits or deductions from specific government incentives such as fuel rebates and research and development (R&D) offsets.

**Private companies, tax reporting by ATO and public financial reports**
Under the existing tax transparency law, the ATO must publicly report certain tax information on companies whose total income exceeds AU$100 million. However, there is currently a government proposal to exempt certain Australian-owned private companies from having their tax information published by the ATO.

As well, the interim report also recommends that the Corporations Act be amended so that the concept of “grandfathered large proprietary companies” be removed, which will then require those companies to lodge financial reports.

**Public register of tax avoidance settlements**
Recommendation 5 proposes the establishment of a public register to record tax avoidance settlements where the settlement value exceeds an agreed threshold.

**Government agency reports on aggressive tax practices**
Recommendation 7 is that the ATO and related government agencies provide an annual public report on aggressive tax minimization and tax avoidance activities. The report is concerned that Parliament does not have sufficient information to assess whether the integrity of the corporate tax system has been compromised, the extent of the problem, and how best to address it. This proposed annual report would include estimates of forgone tax revenue, evaluate the effect of policy, and propose potential tax law changes.

**Greater public financial reporting**
The interim report recommends greater disclosures by non-reporting entities (under the Corporations Act) if this information is sought by the ATO. As well it recommends that the relief from financial reporting under Australian Securities and Investments Commission Class Order 98/98 be withdrawn if the ATO notifies ASIC and an individual company of withdrawal of that relief.

**Government Senators’ Dissenting Report**
The Senate Committee is dominated by opposition and non-government members, and the recommendations in the interim report do not necessarily reflect Government policy. This is clear from the dissenting report provided by Government Senators that is included in the interim report.
They have expressed concerns about some of the recommendations and the failure to recognize various actions taken by the Government and ATO to combat corporate tax avoidance, announced in the 2015 Budget, including:

- Proposed multinational anti-avoidance law (MAAL) to apply to certain arrangements by multinational groups designed to avoid creating permanent establishments in Australia in relation to sales to unrelated parties (this is planned to be introduced in the next parliamentary sitting, 7-17 September)
- Development of the proposed voluntary corporate tax disclosure code, currently being considered by the Board of Taxation

Plans for final report in 2015

The Senate inquiry will continue for some months, with additional hearings and further written submissions (potentially involving oil and gas companies, and “sharing economy” companies).

The interim report states that the final report will focus primarily on transfer pricing and profit shifting, in particular excessive debt loading, foreign companies avoiding permanent establishment in Australia and the use of tax havens.

The Senate inquiry’s final report is provisionally due to be tabled on 30 November 2015.

This provisional release date follows the anticipated release of the OECD final BEPS deliverables and recommendations. The final report may include the Senate inquiry’s views on actions to be taken arising from the OECD’s recommendations.

ATO public reporting of large companies’ tax data

In addition to issues arising from the interim report, large companies should prepare for the ATO’s public reporting of companies’ tax information. The public reporting is expected to occur in December 2015 and the ATO is expected to notify affected companies from August 2015, to enable companies to review the proposed disclosures.

The Government plans to introduce amendments to exclude Australian owned private companies. These amendments have been cleared for introduction into parliament by the Government, but passage of the amendments in the Senate is not assured.

Impact

The interim report will intensify the media scrutiny on multinational entities’ tax footprint. The ATO publicly reporting on certain tax information of large corporate entities, in December 2015, will see continued scrutiny and discussion regarding corporate taxpayers and whether they are perceived to have paid their fair share in tax.

Next steps

Businesses should start preparing for the ATO public disclosures in December, and consider proactive tax risk management and disclosure strategies to mitigate any potential reputational damage, including:

- Preparing proactive tax disclosures
- Drawing up a strategy to address public reporting of the group’s tax information
- Updating or developing the tax risk management framework to incorporate public disclosures
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