

s.22(1)(a)(ii)

From: s.22(1)(a)(ii)
Sent: Wednesday, 14 February 2018 5:36 PM
To: s.47F(1) @abc.net.au'
Cc: s.47F(1) @abc.net.au'; Treasurer Media
Subject: Emma Alberici story [SEC=UNCLASSIFIED]

Hi s.47F(1) hope you are well.

My name is s.22(1)(a)(ii), Senior Media Advisor to the Treasurer Scott Morrison.

I bring to your attention Emma Alberici's story this morning.

It is riddled with inaccuracies, betrays a lack of understanding of corporate taxation, and basic economic and commercial principles. The article does not provide any balance or counter argument whatsoever, as required by the ABC Charter.

Nor did Ms Alberici, in formulation of either of the pieces published today, reach out to the Treasurer's Office or the Minister for Revenue's Office for comment or clarification.

I note Ms Alberici received a two-hour briefing from the ATO Deputy Commissioner Jeremy Hirschhorn on tax enforcement, tax integrity and tax compliance. She deliberately disregarded this advice from the leading tax avoidance expert at the ATO, who was also intimately involved in the development of Australia's Tax Integrity Legislation and Frameworks. I understand Mr Hirschhorn sought to educate Ms Alberici on the basics of tax avoidance and company tax obligations after she expressed limited understanding.

Again, she chose to avoid this advice and instead chose to mislead her audience in order to pursue an agenda.

In addition to the story, I note Ms Alberici's tweet this afternoon citing Treasury resource about GDP growth. It incorrectly cites Treasury modelling and in fact cites left-wing think tank Australia Institute analysis of Treasury's conclusion. I would have thought Ms Alberici could have comprehended such a distinction.

I note Ms Alberici also today retweeted Bill Shorten's false claim of the Turnbull Government's "\$65 billion handout to multinationals".

Ms Alberici's story reveals an inherent bias and is activism disguised as journalism, and we would expect more from the ABC's Chief Economics Correspondent.

I'll point out a few things.

- * The story reports revenue as "income", giving the impression it is equivalent with profit. This is a fundamental flaw.
- * The story confuses tax rate and tax avoidance. The story clearly pushes for rates not to be cut, or indeed be raised. But that would only affect those paying tax and does nothing to those Ms Alberici complains about that are in a loss position and have a zero tax liability. Companies Ms Alberici refers to as having a zero tax liability would still pay no tax if rates were increased.
- * The story uses emotional terms like saying companies "raked in" billions to give impression it is net profit, when its gross revenue.
- * The story ignores interest expenses even for financial institutions.
- * The story overlooks the fact that groups reported to have paid no tax are not for profit entities (eg Chartered Accountants Australia).
- * The story says CSR lobbies against a sugar tax, when in fact they sold their sugar interest to Wilmar years ago.

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- * The story says BHP's Singapore subsidiary on-sells their iron ore at a "hefty" mark-up (the ATO restricts what can be charged under some of the most stringent transfer pricing rules in the world). BHP is generally one of the top six taxpayers in Australia.
- * The story ignores companies that don't need to pay corporate tax in the first place as they have Trusts in their structure collecting passive income like Real Estate Trusts (eg GPT), and instead tax is paid (at a higher rate) in the hands of the underlying investor.
- * The story failed to recognise that some Australian companies do not have operations here in Australia. And just because their product is imported into Australia and sold by others, does not make them liable to pay tax in Australia.
- * The story shows no understanding of the concept of carried forward losses and doesn't provide context by mentioning accumulated losses in prior years. (Qantas' \$2.8 billion loss in 2014).
- * The story complains about carried forward losses, without citing that Labor removed restrictions to use these in 1990 (see below).
- * The story implies companies in a loss position should be paying tax, without the scantest attempt to examine the inverse, namely that if you start taxing companies in loss, you will end up with devastating job losses and businesses going broke.
- * The story fails to provide a counter balance. For example, OECD figures showing Australia is more over reliant on corporate tax than just about anywhere in OECD or how many billions of corporate tax is paid each year (\$68.4 billion for the 2016-17 year alone).
- * The story seeks to downplay Prof. Richard Holden's contribution to the company tax debate by merely passing him off as a 'commentator' despite his status as a leading economist and Ph.D, whereas Saul Eslake, a well-known opponent of company tax cuts is accurately described as an 'economist'.

Points on tax losses and economic losses

- * Allowing losses to be offset against future profits is a standard feature of most income tax systems.
- * Generally a tax loss occurs where the total deductions claimed for an income year exceed the total of assessable and net exempt income for that year. Accounting profit/loss will rarely equate to tax profit/loss.
- * Tax is also reduced because of investment. Taxpayers get a deduction on depreciation because they are investing in depreciable capital infrastructure – like factories, shops, equipment – things which actually create jobs and help productivity. Businesses recover the cost of capital often before they start paying tax. A huge proportion of losses reported are because of the significant capital investment that businesses are making into Australia which fairly reduces their taxable income, and will help their long term profitability and therefore total tax they pay to the Australian public purse over the longer term.

We are puzzled there was no mention of this previously given Ms Alberici used this very point to question Wayne Swan on claims that mining companies were paying no tax and, by implication, therefore somehow dudding Australians.

<https://www.youtube.com/watch?v=hhumnZuFnHs>

- * On average, accounting losses are reported by 20–30 percent of the ASX top 500 companies in any one year. This is broadly comparable to the ATO data, which shows that around one third of companies did not have a tax liability in 2015-16.
- * Restrictions on the carry forward of losses used to exist in Australia (under which losses could generally only be carried forward for seven years). These restrictions were removed in 1990 by the Labor Government (they were announced in the 1989-90 Budget by Paul Keating and introduced into Parliament by the Minister assisting the Treasurer, Simon Crean).
- * Labor in fact tried to extend the use of losses in 2013 and make them refundable. The loss carry back regime proposed to operate as a refundable tax offset, effectively providing a loss company with a cash refund for the tax that was paid in a prior year(s). The Coalition Government repealed loss carry back rules that were introduced in 2013 which allowed companies to choose to "carry back" tax losses to be offset against tax paid in either of the two preceding years (up to a cap of \$300,000)

The Government's actions to address multinational tax avoidance

- * It is important to note, the data referred to in Ms Alberici's article is taken from income years that pre-date the application of the full suite of the Turnbull Government's new laws to close loopholes and ensure any profits earned here are taxed here. As such is neither a fair nor accurate picture of the context within which the Enterprise Tax Plan is presented to the Parliament and Australians.

Multinational Anti-Avoidance Law

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- * The MAAL was legislated December 2015, with effect from 1 January 2016. Labor voted against this law.
- * To date, the MAAL has caused 38 multinational entities to change their tax affairs, added \$7 billion of additional income to the tax base, collected half a billion dollars of additional GST payments and, as confirmed by the ATO in October 2017, was instrumental in almost a billion dollars' worth of tax assessments issued in the 2016/17 financial year.
- * Also useful for the ATO in locking in appropriate arrangements going forward.
- * Consultation was announced just this week on extensions to the law earlier this week which will prevent large multinationals from using foreign trusts and partnerships in corporate structures to avoid its application.

Diverted Profits Tax

- * Legislated March 2017, with effect from 1 July 2017.
- * Together, the MAAL and the Diverted Profits Tax are expected to raise around \$650 million over four years (to 19-20) from large multinationals.

Tax Avoidance Taskforce (briefly referred to in article)

- * Established 1 July 2016
- * Means ATO now have more staff than ever before dedicated to examining the affairs of big companies and high net worth individuals.
- * With the support of the Tax Avoidance Taskforce: In 2016-17, the ATO raised liabilities of \$4.1 billion against large public groups and multinationals, of which the ATO has collected \$2.9 billion in cash as at the end of December 2017. A further \$1.1 billion has been raised so far in 2017-18. In 2016-17, the ATO raised liabilities of \$1 billion against wealthy individuals and associated groups, including trusts and promoters, of which the ATO has collected \$500 million to the end of June 2017. A further \$913 million has been raised so far in 2017-18

Country-by-Country Reporting Regime

- * Introduced in December 2015, with effect from 1 January 2016. First reports exchanged in September 2017.
- * Transparency measure that provides the platform for unprecedented information sharing between international tax authorities.
- * Was described by the Commissioner of Taxation at Estimates in October 2017 as being of "enormous value" and "transformational to our (the ATO's) international tax work".
- * The CbC reports are intended as an important information tool to be shared by relevant tax authorities. The Opposition has called for the CbC reports to be released publicly. This would undermine the confidentiality of the information (the agreed basis of the regime) and would prevent the ATO from receiving information from other countries about the tax affairs of multinational entities.

I would request that the gross factual inaccuracies in Ms Alberici's story be corrected as a matter of priority.

Kind regards

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