1 June 2015

Tax White Paper Task Force
The Treasury

By online lodgement

Dear Sir/Madam,

Foxtel response to Re:think Tax discussion paper

Foxtel welcomes the opportunity to comment on the Australian Government's March 2015 *Re:think Tax discussion paper* (the **Discussion Paper**).

Foxtel's principal feedback relates to the application of GST to digital consumer services which are targeted at Australians but which originate overseas. We also respond briefly below to commentary in the Discussion Paper about Australia's company tax rate and outline how tax system incentives to produce Australian television programming can be enhanced.

The Discussion Paper notes that the Government is committed to ensuring that everyone is paying their fair share of tax, and notes that the Government aims to deliver lower, simpler and fairer taxes. Foxtel supports each of these aims. In addition, we consider that tax reform should be informed by princples of:

- **competitive neturality—**Australian services should operate on a level playing field with overseas-based competitors when it comes to tax;
- **encouraging invesment and growth—**the Government should set tax rates at levels that encourage investment in Australian-based services and jobs; and, where public policy dictates, use tax rebates that encourage investment and innovation; and
- **transparency—**as well as being simple, tax rules should be clear so that businesses and the community can have confidence that they apply fairly and so that the costs of complying with them are kept to a minimum.

Who we are

Foxtel is one of Australia's most progressive and dynamic media companies, directly employing around 2,700 Australians, and delivering a diverse subscription television (**STV**) service to both regional and metropolitan areas over cable, satellite and broadband distribution.

We offer a better entertainment experience every day to each one of our 2.8 million subscribing homes through delivery of new and inspiring programming across all genres, the world's most popular channel brands, and investment in high quality local content. As constant champions of innovation we have brought customers the iQ personal digital recorder, Australia's largest high definition offering, the Foxtel Go App for tablets and mobile devices, our internet TV service, Foxtel Play, and subscription on demand entertainment service, Presto.

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In 2015 Foxtel has also launched new television, broadband and home phone bundles with Foxtel internet and voice services delivered over one of Australia's largest telecommunications networks.

When Australians buy entertainment and communications services from Foxtel they are not only directly supporting the 2,700 Foxtel staff who work across the country, but they are also supporting an Australian company which pays tax in Australia and whose services attract GST. In these ways buying a service from Foxtel helps contribute to the Government revenue required to fund public services.

GST

The benefits and challenges of the digital economy

It is undoubtedly the case that the rise of the digital economy and the empowerment of consumers to import goods and services from a broad range of international suppliers has increased consumer choice, competition and therefore consumer benefit. Foxtel welcomes competition and agrees that the increased digitisation of global commerce, by opening the Australian economy to the world, has had an *'overwhelmingly positive influence by increasing business efficiency and living standards and driving economic growth'*.[1]

However, as the Discussion Paper notes:

> *[t]echnological change (particularly the rise of the digital economy) has put strain on tax systems around the world, with effects including weakening the ability of tax systems to raise revenue.*[2]

We acknowledge commentary in the Discussion Paper that intangible products, such as those in which intellectual property vests, can present challenges when it comes to taxing the value or income generated by these assets.

However, by contrast, it is straightforward to identify where such services are consumed, making it much simpler to apply consumption taxes. In this regard Foxtel shares the concern raised in the Discussion Paper that the growth of online retailing—including growth in the importation of intangibles directly over the internet—will, without reform, *'increase foregone GST revenue and affect the competitiveness of domestic businesses over time'*.[3]

The video streaming case study

Taking into account the principle of competitive neturality, and given the concerns outlined above, Foxtel supports the application of the GST to all digital services targeted at Australian consumers, whether these services originate in Australia or another country.

This is not currently the case and, as has been noted in a number of recent press reports, the case of nascent Australian subscription video on demand (**SVOD**)

[1] Discussion Paper, page 8.
[2] Discussion Paper, page 7.
[3] Discussion Paper, page 139.

entertainment services provides a useful example of how this disparity is affecting fair competition.[4]

Currently, the monthly fee for Australian-based SVOD services such as Presto (which, in relation to Presto TV, is a joint venture between Foxtel and Seven West Media) and Stan (a joint venture between Nine Entertainmnet Co. and Fairfax Media) is GST-inclusive. Presto is priced from $9.99 a month and Stan is priced at $10 a month

On the other hand, the monthly fee for the competitor Netflix SVOD service is GST-free and is priced from $8.99 a month—the price difference being equivalent to the GST component of the Presto and Stan monthly fee.

Services like Presto, Stan and Netflix represent great value for consumers because they offer premium entertainment at low price points on flexible month-to-month contracts. However, as a result of these low price points they are low margin services for operators and the marketing advantage conferred by even small variations in retail pricing—such as the GST-free price Netflix can charge—could have a serious impact on the ability of a service to grow its subscriber base and establish a viable business model.[5]

Furthermore, as noted in the Discussion Paper, there are administrative costs for businesses associated with paying, collecting, claiming credits and remitting GST on sales and purchases. Indeed, GST compliance costs across Foxtel's business are material. Therefore, competitive imbalance is created when such costs are incurred by Foxtel, but not by one of our competitors.

A welcome solution

Given that the GST is Australia's third-largest tax source,[6] and that nearly a quarter of total state and territory revenue comes from GST,[7] it is important that it both operates fairly and that the GST base is not eroded.

We therefore welcome the Government's recent decision to introduce legislation designed to level the playing field with regards to GST on digital transactions. As Foxtel noted publicly at the time of this announcement, enforcing GST for the supply of digital content services will ensure that no one player is advantaged through tax loopholes.

We note the release of an exposure draft of the *Tax Laws Amendment (Tax Integrity: GST and Digital Products) Bill 2015* (the **Bill**), which would amend the *A New Tax System (Goods and Services Tax) Act 1999*.

The Explanatory Memorandum indicates that the proposed changes are modelled on similar rules currently in operation in the European Union and Norway,[8] suggesting that passage of the Bill would bring Australia into line with overseas best

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[4] For example, see 'Government must act on cynical tax operators', editorial, *Sydney Morning Herald*, 25 March 2015 – available at http://www.smh.com.au/comment/smh-editorial/government-must-act-on-cynical-tax-operators-like-netflix-20150324-1m6jl0.html.

[5] This distortion is recognised in the Discussion Paper where it is noted that *'[e]xemptions to the GST base reduce the efficiency of the tax. Taxing some goods and services but not others changes the relative prices of taxed and non-taxed goods, which distorts consumer decisions about which goods and services they buy'* – Discussion Paper, page 138.

[6] Discussion Paper, page 134.

[7] 23 per cent – see Discussion Paper, page 129.

[8] Exposure Draft Explanatory Memorandum, *Tax Laws Amendment (Tax Integrity: GST and Digital Products) Bill 2015*, page 6.

practice. Foxtel is currently assessing the Bill and will provide any detailed comments on its drafting to the separate Treasury consultation process which closes on 7 July 2015.

Company tax rate

While Foxtel does not wish to make detailed submissions on the matter, we do support further consideration of how a reduction in the corporate tax rate might encourage higher levels of investment in Australia (thereby promoting growth in productivity, innovation, employment and wages).

As noted in the Discussion Paper, while a reduction in the company tax rate may have a short-term impact on on tax revenues, it is likely to lead to long-term gains arising from increased economic activity.

Encouraging Australian production through the tax system

On the matter of encouraging investment, the Discussion Paper also deals with tax offsets—concessions that reduce a person or entity's tax liability—in a number of areas, including in the context of research and development (**R&D**). It notes that many countries provide incentives for R&D through their tax systems, in addition to grants and other forms of direct assistance.

The paper indicates that R&D tax offsets are:

> *the primary mechanism by which the Government seeks to encourage companies to undertake R&D activities in Australia. The R&D tax incentive is intended to encourage R&D activity that would not otherwise occur, and to improve the incentives for smaller companies to engage in R&D. It may also attract new investment in R&D activities, including from foreign investors.*[9]

Tax offsets also currently apply to encourage investment in the Australian screen industry—which Foxtel supports through substantial investments in the commissioning and broadcast of first-run Australian content across a range of program genres. As with R&D, tax offsets for screen production can help fund projects which might not otherwise be made.

The relevant incentive is the Producer Offset, which is a refundable tax offset for producers of Australian feature films, television and other projects. The Producer Offset is paid by the government to the production company through the company's tax return after the project is completed.

Foxtel fully supports the Producer Offset as an efficient mechanism to encourage Australian screen production, but considers it inequitable that film and television productions are subject to different offset levels—currently the Producer Offset provides contributions of up to 40 per cent of qualifying expenditure incurred in making a feature film, but only 20 per cent of qualifying expenditure incurred in making television programs.

Foxtel has for some time submitted that premium television programs should be treated the same as feature films. In other words, to the extent that such television programs meet the relevant eligibility requirements, their producers should be

[9] Discussion Paper, page 100.

entitled to a 40 per cent offset. This would reflect the increasing popularity and cultural contribution of high-end television.

Foxtel encourages the Government to consider as part of this review the benefits to Australian culture (through the telling of more Australian stories), and the benefits to the Australian economy (through greater screen production employment and economic activity), of an increase in the Producer Offset for television projects.

Yours sincerely,

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