From: David Richardson
To: MNE Tax Integrity
Subject: Submission on multinational tax integrity and enhanced tax transparency
Date: Friday, 2 September 2022 3:31:16 PM
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The Australia Institute welcomes the opportunity to make a submission on multinational tax integrity and enhanced tax transparency.

The Australia Institute acknowledges the submission from the Centre for International Corporate Tax Accountability & Research and the Tax Justice Network on Multinational Tax Integrity and Enhanced Tax Transparency. It comprehensively addresses the terms of reference.
The purpose of the present submission is to draw your attention to an earlier submission to the Senate Economics References Committee on "Tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia". See https://australiainstitute.org.au/wp-content/uploads/2020/12/TAI-Submission-to-Corporate-Tax-Inquiry-April-2015.pdf In that submission we made a specific recommendation to tackle one particular type of tax minimisation tactic used by multinational corporations.
The particular type of tax minimisation we would like to discuss involves transfers between related entities supposedly for the right to use intellectual property (IP), business models, brands and the like. Consumers pay a big premium for the tech services from particular companies, such as Amazon, Google, Facebook, Apple, and others. In order to minimise tax these companies set up artificial transactions between themselves so that the company registered in Australia pays royalties for the IP to a related subsidiary in another country that is not necessarily the head office of the group. Our company, which we might call TECH, has subsidiaries around the world so that TECH Australia pays TECH Ireland a royalty for the right to use IP. Ireland happens to levy a much lower tax on these receipts than if they had been declared as profits in Australia.
TECH's revenue stream from licensing its IP has to be declared in some jurisdiction and by declaring that TECH Ireland owns the IP it is thereby able to minimise its global tax. However, we suggest the whole arrangement is a sham without any legitimacy. Clearly the corporate decision to set up TECH Ireland as the subsidiary that holds the IP has nothing to do with the IP itself. As Dire Straits puts it "That ain't working, that's the way you do it, money for nothing…"
When the TECH Group makes a profit as a result of its unique product it would make sense to tax that profit where its customers are located and where it extracts that profit. To combat the type of avoidance discussed here, we suggested a rather simple solution: that the tax office simply ignore any notional transaction between different subsidiaries of the same corporation.
Payments for IP to TECH Ireland would simply be ignored for tax purposes and TECH Australia would be taxed as if the transaction did not take place, unless of course the payment involved such things as the commissioning of new software or the purchase of actual services. In the latter case we have well known methods for dealing with transfer pricing and establishing arm's length benchmarks.
The amounts involved are potentially enormous. Press reports cited in the submission to the Senate point to tactics or schemes involving IT licensing and various business services. Our submission to the Senate pointed to license fees for IT paid abroad at $10 billion in the four quarters ending March 2014. That has since risen to $14 billion in the four quarters to Dec 2021; some "other" business services are no doubt also implicated and they amounted to $58 billion.[1]

Much of that is likely to be legitimate but nevertheless we have a $72 billion haystack with a lot of needles in it.
Our submission to the Senate Committee concluded:
The Committee should recommend that the government introduce amendments to the tax act that would have the effect of nullifying licence fees for IT and similar payments for other business services between closely-owned subsidiaries. That would have the effect of ensuring tax is paid in Australia in proportion to the profits that derive from Australia.
Also, the ATO should ignore any transaction between 100 per cent owned affiliates of a multinational unless it can be shown that there is a genuine trade between the two. On these matters the government is always going to be at a disadvantage since the taxpayer knows much more about its business than the ATO can discover. Given those information asymmetries there is a case for reversing the onus of proof when there is good reason to suspect the motive of various overseas transactions.
We think those principles should be included in the amendments to the company tax legislation.

Thank you

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[1] ABS (2019) *Balance of Payments and International Investment Position, Australia, Sep 2019*, Cat no 5302.0, 3 December.