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2 September 2022

### **Submission to Treasury Tax Integrity and Transparency**

1. I have prepared this submission having regard to the matters addressed in Part 3 of the Consultation Paper.

#### **My Background**

2. I am a chartered accountant and a solicitor. From 1984 to 2017, I worked for a firm known as Greenwoods & Herbert Smith Freehills (“Greenwoods”). Greenwoods was a preeminent Australian tax advisory firm.
3. I now run my own specialist tax firm, Watson Tax Lawyers.

#### **White-Collar Crime**

4. Despite all the psychological theorizing about white-collar crime, in the end, specific acts of white-collar crime occur because specific choices are made by specific individuals or groups of individuals working in concert. These individuals are sensitive to the potential that they or their companies may suffer reputational damage as a result of the exposure of lawbreaking (Paternoster and Simpson 1996; Shover and Hochstetler 2006). The threat of exposure can therefore retard criminal behaviour.
5. It is hard to find any study of white-collar crime that does not in one way or another blame the occurrence of the crime on the offender's having the opportunity to do it. For white-collar crime, the answer to the question "Why did they do it?" is almost always "Because they could." (Felson and Eckert 2015).
6. The most important difference between white-collar crime and street crime *opportunities* is that white-collar offenders have legitimate access to the targets of the offences (Felson and Eckert 2015). This access almost always arises out of the offender's occupational role or position within an organisation.
7. And because white-collar offenders have legitimate access to the targets, the common crime prevention technique of reducing crime by blocking the offender's access to the target is difficult if not impossible to use in the case of most white-collar crimes. Furthermore, white-collar criminals have the advantage of the superficial appearance of legitimacy of their offences. In other words, the offences are not obvious (Braithwaite and Geis 1982).

#### **Control**

8. The first challenge, then, in controlling white collar crime is that the crimes themselves can be difficult to detect because they are often camouflaged as legitimate business activities. The second challenge, even when a white-collar crime does come to light, is that if it is committed in an organisational setting, it can be difficult for regulators and prosecutors to pinpoint the responsible party (Benson and Cullum 1998).

9. Thirdly, the investigation of crimes committed by companies can be extremely complex, time-consuming and resource intensive. Fourthly, the defendants in white-collar cases have abundant legal and financial resources with which to fight any charges by taking full advantage of the procedural safeguards that are built into modern legal systems (Mann 1985).

### **Tax Transparency**

10. When offenders encounter potential opportunities, they decide whether or not to offend based on five dimensions:
  - a. The effort needed to commit the offence;
  - b. the risk of being detected;
  - c. the reward to be gained;
  - d. situational conditions that provoke criminal action; and
  - e. their ability to excuse or rationalise their behaviour (Cornish and Clarke 2003).
11. Tax transparency should play a pivotal role in increasing the detection risk, and disrupting rationalisation. Increasing surveillance by letting a great number of the community observe (and potentially report upon) unethical or criminal behaviour, and by supporting whistleblowers, will increase the risk of detection, and thereby reduce the likelihood of the behaviour occurring at all (Centre for Problem-Oriented Policing 2014).

### **Lack of Transparency**

12. The ATO's Deputy Commissioner for Public Groups, Rebecca Saint, gave an address on November 23.

I attach an excerpt from it. The underlining is mine.

#### **Disputes**

*Whilst we have seen positive trends in transparency of tax risks and tax profiles, disclosure of tax disputes to the community could benefit from greater transparency.*

*We continue to see low numbers of disclosures of disputes in financial statements and tax transparency reports. We find it particularly strange where disputes are not disclosed in financial statements are subsequently settled for significant sums of money.*

*Similarly, we often see a reluctance by business to publicly disclose that they have settled a dispute with the Commissioner.*

*We consider it best practice for corporates to disclose these matters.*

#### **Settlements**

*If I turn to settlements in particular.*

*Settlements are part of good administration. It is simply impractical and too expensive to litigate every matter. However, there is a strong desire by the community to have transparency about these matters to ensure we aren't doing sweetheart deals with large business.*

*Public disclosure by organisations brings settlements into the open and whilst doesn't disclose the terms of any agreement, the mere disclosure of a settlement helps to bring a sense of confidence and 'nothing to hide'. Further the public should have confidence that tax transparency reports provide a full and accurate view of the organisation's tax story, not just the glossy shiny bits.*

*Disclosure settlements can also provide other benefits. Significant settlements can set standards for industry. We saw this in the BHP settlement. They can also provide confidence that taxpayers are getting treated consistently, meaning taxpayers can have confidence that they are not getting treated differently to their peers or getting a 'worse deal'.*

*Recognising the importance of disclosure of settlements, we continue to encourage taxpayers to make public disclosures in this regard. This won't always require a disclosure at a press release level, but we do encourage disclosure in tax transparency reports and/or financial statements.*

13. White collar criminals often convince themselves that their crimes are acceptable (see 10.e. above). These techniques of neutralisation include denial of responsibility, denying that there is any victim or any harm, and appealing to a higher loyalty (Benson and Simpson 2009). These white-collar criminals also display traits of entitlement and arrogance. These traits, coupled with the ability to offer excuses, seems to reduce the effectiveness of crime-prevention efforts (Sykes and Matza 1957).
14. But when all else fails, the most crucial thing is that no one finds out. So they hide it.

### **Suggestions**

15. All tax disputes and settlements within the top 200 ASX entities should be published, both by the entity and the ATO. As study after study shows, our behaviour is better if it is observable, or will become known (Beaman, Klentz, Diener & Svanum 1979).
16. The accounting standards should be clear (if they are not) that disputes and settlements must be disclosed and explained. And the ATO should publish, each year, all dispute and settlements with the top 200 ASX entities, together with the letter the ATO sends to the entity each year.

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