END CORPORATE TAX AVOIDANCE

Making sure big corporations pay their fair share

Big corporations have too much control over our democracy. Nowhere is this more evident than in our tax law where the rules have been written to enlarge company profits at the expense of everyone else. The Greens have a comprehensive plan to crack down on corporate and multinational tax avoidance to make sure that big corporations pay their fair share.

The Greens' plan will close the loopholes, increase transparency, improve monitoring and enforcement, and support global efforts to crack down on multinational tax avoidance.

The Greens' plan includes:

- ▲ Ending thin capitalisation by requiring multinationals to use their global debt to equity ratio.
- ▲ Prohibiting tax deductions for royalties on intellectual property paid to related parties.
- ▲ Banning the use of stapled securities.
- ▲ Reducing the threshold for public transparency reports to $50m for all companies.
- ▲ Introducing Publish What You Pay requirements for mining companies.
- ▲ Establishing a public register of ultimate beneficial owners.
- ▲ Abolishing ASIC company search fees and removing 'grandfathered' private companies that currently don't have to publicly report.
- ▲ Publishing details of settlements made with the ATO.
- ▲ Supporting the worldwide campaign for unitary pricing.
- ▲ Supporting the introduction of a 25% global minimum tax rate.

Together, these measures will raise around $4.5 billion over the decade, with the prospect of even more, as the revenue raised by some of these components couldn't be quantified by the Parliamentary Budget Office.

FINANCIAL IMPACT OF MEASURES

- ▲ $2.5 Billion: Ending thin capitalisation by requiring multinationals to use their global debt to equity ratio.

- $2.3 billion: Prohibiting tax deductions for royalties on intellectual property paid to related parties.
- $477 million: Withholding Tax on disbursements to fixed trust assets held by overseas residents
- Cost of $765 million: Abolishing ASIC company search fees and removing 'grandfathered' private companies that currently don't have to publicly report.

CLOSE THE LOOPHOLES

End thin capitalisation

One of the most common ways that multinationals avoid paying their fair share of tax is to artificially shift debt onto the books of their operations in higher taxing jurisdictions. Because debt is tax deductible, doing so helps big corporations reduce the taxable income in relatively higher taxing jurisdictions like Australia, which reduces the tax they pay. This artifice is referred to as 'thin capitalisation' because it reduces the amount of equity (capital) held in a given country.

There are currently restrictions on multinationals thinly capitalising in Australia.[1] However, businesses are still allowed to book a certain amount of debt in Australia regardless of whether it is actually related to its Australian operations (safe harbour rules), and can still increase their debt above worldwide ratios if they make a case that the debt is related to Australian activities (arm's length test). Both of these loopholes allow big companies to reduce the amount of tax they pay.

The Greens would fix this by simply requiring multinational companies to limit their debt-to-equity ratios in Australia to their worldwide average. In other words, multinationals can't book any more debt in Australia than they have across the world. This would simplify the system and ensure that multinationals operating in Australia are not thinly capitalised.

The Greens would also reintroduce a measure from the 2012-13 Budget that would have denied a tax deduction for bad debts where the loan is between two arms of the same company.

[1] https://www.ato.gov.au/business/thin-capitalisation/

Prohit deductions for royalty payments

Similar to the practice of thin capitalisation, some multinational companies reduce their taxable income in higher taxing jurisdictions by charging artificially high rates for intercompany royalty payments. For example, the US based parent company will charge the Australian subsidiary for the use of the company's own intellectual property. This royalty payment is then tax deductible in Australia. This practice is particularly rife among technology based companies.

The Greens would fix this by simply denying deductions for royalties on intellectual property paid to related parties or paid to preferential tax jurisdictions. Companies would not be able to charge themselves tax deductible royalties.

Ban stapled securities

Stapled securities refer to the contractual binding of two or more financial instruments. Most commonly, stapled securities bind together units in a trust that owns an asset with shares in a company that manages that asset. You can't buy or sell units in the trust without also buying or selling shares in the company.

Stapled structures make up about 10% of the market capitalisation of the ASX. But they are almost unique to Australia. Other than limited use in Singapore and Hong Kong, they are rarely found anywhere else in the world.[2]

Stapled securities became popular in Australia, and nowhere else, because they provided a means for foreign investors to access some of the benefits of dividend imputation. The government is slowly closing this loophole.[3] But stapled securities continue to provide tax advantages to companies by allowing them to distribute returns to investors through a trust rather than as dividends.

The Greens would simply ban the use of stapled securities. The rest of the world gets by without them. And there is no evidence that they provide any benefit to companies other than for the purposes of minimising tax.

The Greens would further curb the use of trusts as a tool for multinational tax avoidance by applying a minimum withholding tax of 30% on all cash distributions to non-resident from a fixed trust.

[2] Australian Government, Stapled Securities: Consultation Paper, March 2017.
[3] Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2018.

Close-off tax havens

A lot of corporate tax avoidance relies on artificially basing a company's operations in a tax haven. Tax havens are countries that often do little else other than provide a means for the rich and powerful to hide their wealth so as to avoid tax.

Closing down tax havens requires an international response. But Australia can stop subsidising businesses' use of tax havens. The Greens would do this by stopping companies from claiming a tax deduction for travel and related expenses to and from tax havens, places which often just happen to have very nice beaches too.

Australia can also make it harder for businesses to use tax havens by making it harder for residents of tax havens to operate in Australia. Many tax havens make it very easy to obtain citizenship or residency of that country as this enables businesses to operate in tax havens. The Greens would bring this practice into the list by requiring Australian taxpayers to notify the ATO if they have residency or citizenship in a tax haven.

The government should also exclude companies based in tax haven from all government contracts.

INCREASE TRANSPARENCY

Sunshine is often the best medicine for corporate tax avoidance. Public knowledge of multinational tax arrangements puts pressure on companies to stop avoiding tax and it puts pressure on governments and regulators to crack down on companies avoiding tax.

The Greens would introduce a suite of measures to improve the transparency of corporate tax affairs. These are:

- ▲ Reduce the threshold for public tax transparency reports to $50m for all public and private companies, including partnerships.
- ▲ Abolish the 'grandfathered list' of private companies exempt from public reporting requirements.
- ▲ Establish a public register of beneficial owners so that we can see who really owns and controls companies operating in Australia.
- ▲ Publish country-by-country reports issued by all significant global entities.
- ▲ Require all multinational companies who win government contracts to issue country-by-country reports.

- Publish details on the value of assets transferred offshore by significant global entities to other branches of the same company.
- Introduce a Publish What You Pay requirement for Australian mining companies to disclose any payments made to foreign countries on a country-by-country and project-by-project basis.
- Abolish fees for access to publicly available information on the ASIC Register and make all company reports freely available and searchable.
- Require companies tendering for government contracts to disclose where they are domiciled for tax purposes.
- Require companies to disclose to shareholders all subsidiaries and the jurisdiction of incorporation for these subsidiaries.

IMPROVE MONITORING & ENFORCEMENT

A robust monitoring and enforcement regime is essential to stopping corporate tax avoidance. Unless corporate tax avoidance can be detected and unless companies are made to pay the price for doing the wrong thing then nothing will change. One of the best ways to stop tax avoidance is to create a culture where companies fear getting caught and getting penalised.

To create this culture, the Greens would:

- Double promoter penalties for those who design, market and implement tax avoidance schemes.[4]
- Require tax advisers to disclose to the ATO any aggressive tax minimisation schemes they are promoting, and require companies to disclose any aggressive tax minimisation schemes they are using.
- Provide better protection for whistleblowers, including by increasing the scope of whistleblower protections to cover all public and private sector employees, introducing rewards for whistleblowers, and establishing a single and consistent national framework.[5]
- Require real estate agents, accountants and lawyers to report suspicious transactions to AUSTRAC.[6]
- Publish data on international funds transfer reports made to AUSTRAC.

[4] https://www.ato.gov.au/General/Tax-planning/Promoter-penalty-laws/
[5] See: Senate Standing Committee on Economics, Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017: Additional Comments by the Australian Greens - Reward for risk: recognising the toll on the individual, March 2018.
[6] Senate Standing Committee on Legal and Constitutional Affairs, Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019 [Provisions]: Greens Additional Comments: Um, Tranche 2?, March 2020.

- Publish details of individual settlements agreed to by the ATO with large companies (more than $100m in turnover) where these companies are contesting their tax bill.
- Ensure one-third of the Board of Taxation are representatives of civil society and trade unions.
- Structurally separate the Big-4 accounting firms so that they can't provide both audit services and tax advice to the same companies.

SUPPORT A GLOBAL APPROACH

Australia alone can not end multinational tax avoidance and tax evasion. The measures listed above will go a long way toward reducing it. But to eliminate it entirely and to ensure a more equal distribution of wealth, a global approach is needed.

The Greens believe that Australia should take a lead role in advocating for global measures that are designed to ensure that multinationals pay their fair share of tax. This includes:

- Advocate for a global minimum company tax rate of 25% which is about the weighted average of OECD countries.[7] This would dramatically reduce the incentive for companies to artificially inflate the amount of deductible expenses in high tax jurisdictions.
- Supporting the worldwide campaign for unitary taxation. Unitary taxation would ensure that a minimum amount of revenue, and therefore a minimum amount of tax, is attributed to the operations of a corporation in each country based on basic measures of its operations (e.g. the proportion of production, sales, employment and other factors).

[7] https://taxfoundation.org/publications/corporate-tax-rates-around-the-world/