ENDING THE EPIDEMIC OF TAX AVOIDANCE

A Comprehensive Tax Integrity Package

Tax reform starts at the top, not the bottom.

Taxation is the price of doing business in a prosperous society like Australia. All businesses need to pay their fair share. Australians are sick of multi-nationals treating taxation as an optional extra. Every dollar they don't pay means poorer services and infrastructure for us all.

The Greens have a strong record of exposing and clamping down on tax avoidance. We initiated the nationally significant senate inquiry, we strengthened tax disclosure and financial reporting laws, and now we are proposing the most comprehensive crackdown on tax avoidance this country has ever seen.

The Australian public is outraged with the depth and breadth of tax avoidance practices exposed by the senate inquiry into multi-national tax avoidance. The scale of this tax avoidance requires an equally sized response.

The Greens are committed to stamp out tax avoidance in all its forms. However, the Turnbull government wants to give those same companies and wealthy individuals tax cuts. And Labor has only offered a limited and narrow set of policy measures to date.

> 18 MEASURES ACROSS 4 AREAS: ENFORCEMENT, TAX LAW, DISCLOSURE, DIPLOMACY

Only the Greens have ruled out supporting company and income tax cuts this election, and now we have prepared the most comprehensive response to tax avoidance ever announced in Australia.

This policy will raise at least $1.69 billion additional revenue to spend on essential services and infrastructure. As these tax integrity measures begin to bite we will see an uptick in corporate tax payments made in Australia which will improve the budget bottom line over time.

The Greens measures are aimed at four key areas to combat the scourge of tax avoidance:

- **Enforcement:** To ensure the fair collection of revenue, changes are needed to tilt back the power imbalance away from those companies and individuals artificially reducing their tax liabilities, and towards tax authorities.
- **Tax Law Changes:** Changing the way our tax law operates is essential to the integrity of our tax system. But on its own it is not enough. History has shown that combating tax avoidance is often a game of whack-a-mole: as soon as one provision is closed down, new loopholes are exploited.
- **Enhanced public disclosure:** Effective long-lasting change will come from creating real risks that a company will be exposed to reputational damage for pursuing tax-avoiding strategies. Publicly available information is a key component of this strategy.
- **Global Diplomacy:** There are certain measures that Australia simply cannot take on our own. Global co-operation is required, particularly around transfer-mispricing and profit shifting. Australia should be an activist middle-power seeking bilateral, multilateral and global agreements that crackdown on tax avoidance.

> 1. RESTORE FUNDING TO THE ATO

Category: Enforcement

Simply to rebuild staffing levels to the level they were at the change of government, an additional $500m is needed each year according to the Parliamentary Budget Office.

Consecutive Labor and Liberal governments have cut funding to the Australian Tax Office (ATO). Less resources means less staff examining the claims of companies who say they don't owe any tax. In 2013-14 an astonishing 98 companies with a collective income of $47 billion didn't pay one cent in tax.[i]

The Greens commit to re-resourcing the ATO to ensure the top end of town start to pay what they owe.

Fiscal Impact: $1.62 billion over the estimates period

> 2. ESTABLISH A HIGH-LEVEL TAX RECOVERY UNIT

Category: Enforcement

In addition to reversing the ATO's staffing cuts, the Greens are proposing to reverse the trend of high level tax advisers leaving the ATO and working for the big four accounting firms. This one-way street has exacerbated the power imbalance as senior public officials take their knowledge and insights into the private sector.

The Greens are proposing a new high-level tax recovery unit, made up of 20 of the top tax accountants and legal specialists currently working in the private sector. The Greens want to entice the best-of-the-best to use their skills and knowledge in the public interest to reclaim revenue. This has been anticipated by the Greens to cost around $20 million per year.

Fiscal Impact: $60 million over the estimates period

> 3. INTRODUCE WHISTLE-BLOWER PROTECTIONS AND SUPPORT PROGRAMS

Category: Enforcement

In the previous parliament, the Greens negotiated with Labor to pass new laws to enshrine legal protections for public servants and contractors that expose wrongdoing in the public service. Now it is time to extend these protections to private sector workers in light of the number of financial scandals exposed in the last few years and the horrible toll it has taken on those brave enough to expose wrongdoing.

But offering legal protections alone is not enough for someone who has knowledge of fraudulent activities to risk their financial security, job security and mental health, particularly when they have to provide for a family. To encourage those who want to expose misconduct and enable tax authorities to reclaim money, it is time to follow the lead of US and provide a reward for whistle-blowers. The US False Claims Act offers whistle-blowers a defined but significant proportion of reclaimed money that has been stolen or avoided from government authorities.

Fiscal Impact: These measures will eventually raise revenue for the government but it is unquantifiable at the moment.

> 4. INCREASE POWERS FOR ASIC

Category: Enforcement

The submission by the Australian Securities and Investments Commission (ASIC) to the senate inquiry into multi-national tax avoidance recommended several straight forward changes[ii] that should be immediately adopted, but have not yet been.

Firstly, remove the confidentiality provisions in section 127 of the ASIC Act to allow ASIC to share information with the ATO without having to notify the affected person. Secondly, require all proprietary companies to review and confirm their size with ASIC annually. Thirdly, ASIC should amend Class Order 98/98 so that a company is not eligible for financial reporting relief if the ATO notifies the company and ASIC that the relief does not apply to that company.

Finally, people who propose to become directors of companies be required to provide evidence of their identity to ASIC.

Fiscal Impact: None

> 5. PENALISE OPERATIONS BASED OUT OF 'SECRECY JURISDICTIONS'

Category: Tax Law Changes

The Liberal government has been dragged kicking and screaming, but finally we are starting to see global co-operation on information sharing with other countries. To facilitate this information flow, and to apply diplomatic pressure on countries that operate as secrecy jurisdictions for financial transfers, two complimentary measures are proposed:

Where a jurisdiction is not exchanging tax information with the ATO, residents and companies domiciled in that country for tax purposes will incur higher rates of withholding tax from activities that generated income in Australia. This scheme is used in countries such as France, Mexico, the Slovak Republic and Argentina. It is time Australia adopted this approach also.

Similarly, a resident or company will not be able to claim deductions or tax credits from Australian activities when the secrecy jurisdiction they are domiciled in is not exchanging tax information with the ATO.

Fiscal Impact: These measures will eventually raise revenue for the government but it is unquantifiable at the moment.

> 6. TAX TRUSTS AS COMPANIES

Category: Tax Law Changes

Wealthy Australians are able to hold their assets in trusts and manipulate the sale and income that flows from those them through other intermediaries so that tax is avoided. Splitting income, delaying or avoiding capital gains tax and passing on tax benefits to beneficiaries can be prevented by taxing the financial gains made by those trusts as if they were companies at the company tax rate of 30%.

This policy change was put forward to improve consistency in tax treatment by the Ralph Review commissioned by the Howard government. With the significant growth of trusts over the decade since the report,[iii] now is the time to act on this recommendation and restore trust into trust law.

Dividend imputation would still be permitted when the trust pays tax, but the incentives to manipulate income flows and asset exchanges would be removed.

Fiscal Impact: $2.12 billion in revenue would be raised according to the Parliamentary Budget Office.

> 7. ASSESS MULTI-NATIONALS' TAX DEDUCTIONS BASED ON WORLDWIDE GEARING RATIO

Category: Tax Law Changes

One of the ways companies are able to shift profits overseas is by an Australian subsidiary borrowing money from a related company based in a tax haven. While the global group might only pay 3% interest, the Australian company pays it back to the parent at 9% so that it makes no 'profit' in Australia, and only makes profit in a tax haven overseas.

There are currently three tests available to multinational companies calculating the deduction of loans. The Greens support the ALP's proposal to reduce the options so that the only test for how much interest can be deducted is limited to the debt to equity ratio of the company across its global operations.

While this measure is to be supported, it is not a sufficient response on its own to confront the challenges of tax avoidance.

Fiscal Impact: $1.55 billion in revenue would be raised according to the Parliamentary Budget Office.

> 8. CONSIDER A COMPANY'S TAX ARRANGEMENTS AS PART OF GOVERNMENT TENDER/CONTRACT PROCESS

Category: Tax Law Changes

Wilson Security has multiple government contracts that range from detaining families and children in our offshore detention networks to running the security for the ATO building.[iv] They were awarded the contracts without any due diligence into their tax structures and they were recently exposed as a client of Mossack Fonseca.

A simple, but powerful measure is to require all companies that are submitting tenders for government contracts to provide information on where the company and all its related entities are domiciled for tax purposes.

Government guidelines should stipulate that preference be awarded to companies that do not have any commercial relationship with tax havens. New standard government contract terms should include an ability to terminate the contract without damages if it is discovered that the company was operating part or all of its businesses through secrecy jurisdictions.

Fiscal Impact: Not quantifiable

> 9. ESTABLISH A BENEFICIAL OWNERS REGISTER

Category: Public Disclosure

Trusts and obscure private companies are essential vehicles for hiding money, concealing ownership, laundering assets and evading authorities. While these entities are also used for legitimate purposes, there is still a strong need to promptly uncover the ultimate owners of these entities.

The Greens are proposing that the ATO be empowered to charge penalties against companies and individuals that do not lodge information of who owns or has control of trusts and private companies registered in Australia by 1 July 2017.

Once established this database would be shared with the Australian Information Commissioner who is able to receive applications from journalists, academics, the public service and other interested parties acting in the public interest to reveal the ultimate owners of requested companies.

Fiscal Impact: Small administrative cost

> 10. PUBLISH TOP USERS OF INTER-RELATED TRANSACTIONS

Category: Public Disclosure

Similarly to the way it discloses total income and taxes paid of the wealthiest companies, the ATO's disclosure regime should be expanded to publish the names and financial figures of the top twenty companies that transfer money offshore through inter-related transactions in each financial year.

The ATO submission to the tax inquiry stated that in 2012-13, $388 billion was sent offshore to associated companies. This staggering figure shows that over half of our total exports are transactions of money moved between related companies.[v]

While many of these inter-party transactions may be legitimate, this disclosure will put the onus on companies to explain the rationale and bona-fides of their transactions to the public.

Fiscal Impact: Small administrative cost

> 11. ESTABLISH A SETTLEMENTS REGISTER

Category: Public Disclosure

When a company submits its tax figure that it wants to pay, the ATO can dispute this figure and issue an assessment notice. Lengthy dispute periods then occur where a negotiated payment can be agreed, or otherwise it can go off to litigation in the courts.

Because the ATO is so under-resourced, the Greens have a well-founded fear that the office may be settling for an amount that is restricted by the staffing resources available, rather than fighting for what should be rightly claimed.

A public register would name each company and the settlement they have made with the ATO, listing the amounts that the ATO originally assessed a company's tax liability, and the amount the matter was finally settled for. This will dissuade companies from under-claiming their tax liabilities, it will give the ATO more bargaining power in negotiations to avoid litigation, and it will place public pressure on the ATO not to give too much ground on tax settlements.

Fiscal Impact: Small administrative cost

> 12. MAKE 'AT RISK' INDUSTRIES PUBLISH WHAT THEY PAY

Category: Public Disclosure

Australian mining and construction companies have been making world headlines lately from some of their dubious commercial activities overseas. To assist in combating foreign bribery as well as tax payments made to foreign governments, a publish-what-you-pay regime is needed for these 'at-risk' industries.

Building on the country-by-country reporting regime that the government started this year with the Greens support, a public register should commence whereby Australian mining and infrastructure companies disclose the quantum and purpose of funds paid to foreign governments.

Fiscal Impact: Small administrative cost

> 13. LOWER TAX DISCLOSURE THRESHOLDS

Category: Public Disclosure

Last year, the Turnbull government exempted Australian private companies from disclosing how much tax they didn't pay. Through negotiation with the Greens, disclosure was restored so that, in March of this year, private companies with $200 million in income had to disclose their tax affairs.

This tax disclosure initiative—originally established in the previous parliament with the support of the Greens—has produced very important information for public discussion and will help to drive a change in culture for companies artificially reducing their taxes paid.

The Greens are committed to building on the initiative by reducing the disclosure threshold down further for both private and publicly listed companies beyond their current levels so that companies with $50 million of income in a year will disclose their taxes paid (or not paid).

Fiscal Impact: Small administrative cost

> 14. END THE EXEMPTIONS ON DISCLOSURE FOR GRANDFATHERED COMPANIES

Category: Public Disclosure

Since financial reporting changes for companies occurred in 1995, around 1,500 private Australian companies have been exempt from filing financial accounts with ASIC which the rest of the corporate community has to. One such company is owned by Prime Minister Turnbull.

There are reports that these company names are being sold to other companies at a premium because they allow the owner to avoid disclosure under the regular reporting regime.[vi]

ASIC itself has requested the end to this twenty-year sweetheart deal for non-reporting financial entities[vii]. The Greens agree.

Fiscal Impact: Small administrative cost

> 15. TIGHTEN ACCOUNTING REPORTING STANDARDS

Category: Public Disclosure

Companies have to provide detailed *general purpose accounts* with ASIC unless the company claims—and their auditing firm agrees—its financial details wouldn't be of any benefit to shareholders. Then the company can then file *special purpose accounts* which do not provide detail of any substance for the ATO, other regulators, shareholders or the public.

Ansett switched to special purpose accounting before its collapse.[viii] Alarmed at the massive rise in companies filing special purpose accounts, the Greens negotiated with the government to require companies with $1 billion global turnover to file detailed general purpose financial reports.

The Greens want to expand this reporting regime to require companies whose constitutions allow a Director to defer to the best interests of their global parent, and thereby circumvent their legal obligations, to act in the best interests of the Australian company and shareholders.

This characteristic in a company's constitution implies that a foreign parent is in control of the Australian entity, so when the heightened risk for profit-shifting arises, it should be tempered by a requirement to file general purpose accounts with ASIC.

Fiscal Impact: Small administrative cost

> 16. STOP THE FUTURE FUND INVESTING IN COMPANIES BASED IN TAX HAVENS

Category: Global Diplomacy

The Australian government should lead by example and not encourage the practices they state they are committed to combating. The government's Future Fund, chaired by former-Treasurer Peter Costello, currently has multiple subsidiaries domiciled in tax havens ranging from the Guernsey Islands, Luxembourg, Ireland and the Cayman Islands.[ix]

The Future Fund's legislation should be amended to prevent the establishment or operation of investment vehicles in secrecy jurisdictions and tax havens, with suitable time allowed for the transition of assets out of those locations. This measure will be a tangible measure that Australia can take into global negotiations to show that we are serious about stopping tax avoidance.

Fiscal Impact: Financial impacts are limited to the Future Fund and off the government's balance sheet.

> 17. INVEST TO MAKE AUSTRALIA AN 'ACTIVIST MIDDLE-POWER' USING DIPLOMACY TO FIGHT GLOBAL TAX AVOIDANCE

Category: Global Diplomacy

Stopping companies from shifting profits out of Australia through related-party transactions is a problem that no government can tackle alone. Multinational tax avoidance requires a multilateral response. The Greens want to see Australia take the lead—particularly in our region—to work on the emerging challenges of the digital economy, the fair pricing of intellectual property, and the creation of a strong OECD Base Erosion and Profit Shifting (BEPS) agreement.

Australia should be aggressively pursuing agreements to reduce tax avoidance in the same way we have aggressively pursued trade agreements.

Additional resources are required to bring hesitant and recalcitrant countries on board, and to build up a strong multilateral framework to carry global actors into the fluid and multinational economy that has raced past nation-states.

The Greens propose to recycle and invest $250 million of the $400 million[x] raised by changes in tax avoidance laws into diplomatic efforts to show leadership on the OECD BEPS process, engaging with nations in the Asia-Pacific region and tighter collaboration between revenue authorities.

Fiscal Impact: $250 million additional funding over four years.

> 18. WORK TOWARDS UNITARY PRICING

Category: Global Diplomacy

The ultimate policy solution to transfer mispricing and profit shifting is ensuring that taxes are paid where the economic activity occurs. This requires countries working together to create a framework for apportioning a company's taxes to the jurisdictions where they derived their income. For instance, if 6% of Apple's global sales occurred in Australia, then 6% of their global profits should be taxed under Australian law.

The United States and Canada already have formulas in place for sharing tax internally amongst states and provinces. The EU is looking to do the same.[xi]

Investment in long-term planning should begin now to work towards formulatory apportionment and unitary pricing across the globe so that multinationals can no longer escape paying taxes and put an end to artificial profit shifting. The remaining $150 million of the $400 million raised so far will be invested in this future.

Fiscal Impact: $150 million over four years

> COSTINGS OVER FORWARD ESTIMATES

($m)	**2015-16**	**2016-17**	**2017-18**	**2018-19**	**Total**
Restore ATO Staff Cuts		-500	-540	-580	-1,620
Establish Tax Recovery Unit*		-20	-20	-20	-60
Taxing Trusts as Companies	-20	580	780	780	2,120
Worldwide Gearing Ratio		550	500	500	1,550
Diplomatic Investment*		-100	-100	-100	-300
Total	**-20**	**510**	**620**	**580**	**1,690**

* Greens allocations; not costed by the PBO.

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[i] Australian Tax Office *2013-14 Corporate Tax Transparency: Report of Entity Tax Information.*
[ii] ASIC Submission to the Senate Inquiry into Corporate Tax Avoidance Table 2.
[iii] ACOSS *Budget Priorities Statement 2016-17* page 28.
[iv] ABC *Four Corners: The Panama Papers* 4 April 2016.
[v] ATO Submission to the Senate Inquiry into corporate tax avoidance 12 February 2015 page 10.
[vi] http://www.smh.com.au/federal-politics/political-news/tax-questions-malcolm-turnbull-asks-to-have-his-company-removed-from-exclusive-list-20151123-gl64o4.html
[vii] ASIC Submission to the Senate Inquiry into Corporate Tax Avoidance Table 2.
[viii] http://www.smh.com.au/business/banking-and-finance/big-companies-hiding-their-numbers-20151106-gksbpv.html
[ix] Future Fund Annual Report 2013-14 listed on pages 99-103
[x] http://www.news.com.au/finance/money/tax/ato-has-tax-avoiders-in-sight-morrison/news-story/09c003346ce25a30a3463365c5208541
[xi] European Commission Taxation Papers *Formulatory Apportionment and Group Taxation in the European Union: Insights from the United States and Canada.* Working Paper No.8 for 2005.