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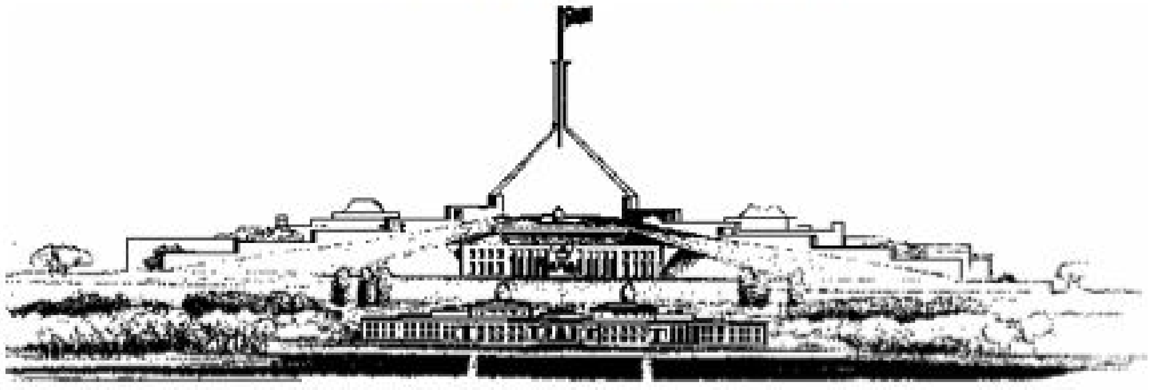

HOUSE OF REPRESENTATIVES

PROOF

BILLS

Treasury Laws Amendment (Combating Multinational Tax Avoidance) Bill 2017, Diverted Profits Tax Bill 2017

Second Reading

SPEECH

Tuesday, 21 March 2017

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Questioner		**Responder**	
Speaker	O'Brien, Ted, MP	**Question No.**	

Mr TED O'BRIEN (Fairfax) (12:33): It is hard to follow 30 minutes of a rewrite of history from the member for Fenner, who enjoyed giving us a good narrative of a Labor version of alternative facts as well as his own manifesto of tax. As fascinating as that was, he barely touched on the very legislation which is before the House today. Where he did, however, his main accusation was that the coalition government has not been taking adequate action when it comes to tax avoidance on behalf of multinational companies.

I remind the member for Fenner that $2 billion will be clawed back in this very financial year due to the multinational anti-avoidance legislation introduced by the coalition. The member for Fenner might think that $2 billion is not much, but, in fact, it does represent a dollar figure for action being taken to date by the only party that has decided to ensure that the money that should be paid to the Australian government by multinationals is paid. But that does not mean the job is over, and that is why I stand here today to talk about this bill—the Treasury Laws Amendment (Combating Multinational Tax Avoidance) Bill—which is part of a global response to a global and not just Australian problem. Although it must be said that this bill will place Australia at the head of the pack in how to address the problem.

Essentially, the measures in this bill are part of a coordinated and planned response to the fact that more and more business is being done around the world, including here in Australia, by very large companies that operate across multiple jurisdictions. Many of these large multinational companies do the right thing and fully remit their tax liability. There is no doubt about that. But, likewise, there are some that do not. Indeed, there are some multinational companies that seek to consciously avoid paying fair and reasonable tax in the place where they do business. In fact, evidence suggests that some actively plan to do just that.

This is one of the uglier realities—one of the uglier by-products, if you like—of globalisation, which is a phenomenon that I otherwise support wholeheartedly because it has not only served our country well but also dragged hundreds of millions of people out of poverty in other lands while facilitating greater peace and prosperity around the world. Nevertheless, even in this modern and highly integrated global economy where markets operate based on the rule of law, and whose design is largely based on Liberal principles to which our country subscribes, the darker side of human nature is still widely evident and poor behaviours still arise, including dodging tax.

Action by individual nation-states, such as Australia, as represented by this bill, is therefore needed. Of course, to be truly effective over time, more international cooperation is required so together, with other affected jurisdictions, we can plug the loopholes that allow some multinationals to avoid paying their dues. When they avoid paying their due they effectively rob communities, leaving governments short-changed, with less for hospitals, schools, roads and services and less to fund welfare to support the disadvantaged. This cannot stand.

It is, of course, a given that companies will always seek to minimise their tax bill. They are, quite naturally, keen to reduce their tax liability as much as possible so they can boost their after-tax profit and maximise shareholder value. Companies are, common-sensibly, bound to find the lowest possible corporate tax regime they can, and it is common practice that companies often try to stretch the law to the limit to maximise profit for their shareholders. For multinationals, especially, there are plenty of opportunities and many temptations. The truth is that some jurisdictions provide significantly lower tax regimes than Australia. Highly competitive locations, such as Hong Kong, Singapore, Switzerland and Ireland, have prospered mightily by offering companies some of the lowest corporate tax rates in the world—as low as 12½ per cent in the case of Ireland. Our corporate rate, for all but the smallest of companies, is currently 30 per cent. While the US rate is currently a whopping 39 per cent, one of the highest in the world, the new Trump administration has signalled a clear intention to significantly reduce the US corporate tax rate down to as low as 15 per cent. As a medium-sized, free-market economy that is a net importer of capital, it is essential that we keep our corporate tax rate competitive. That is precisely what the Turnbull government is seeking to do courtesy of the Enterprise Tax Plan that the member for Fenner just spoke about.

The previous member—it surprises me, given his academic background in economics—seems to be in denial of the fact that by reducing corporate tax you increase companies' return on investment. When they have a higher return on their investment they invest more, and with more investment comes more jobs. Therein lies the value of the Enterprise Tax Plan.

However, the bill being debated today is not addressing the competitiveness of our rate, but rather the adverse behavior of some multinationals, which do business in Australia and then seek to abrogate their responsibility to contribute by not paying their fair share of tax. Given the diversity of corporate tax rates around the world, is it any wonder that some large multinational corporations channel their profits to jurisdictions with much lower corporate tax rates? They have been doing it in a number of ingenious ways, all of which essentially amount to shifting profits from high-tax environments to low-tax environments, all with a view to achieving one key objective—to avoid tax.

It is one thing to take reasonable and lawful steps to limit one's tax liability, but it is quite another to ruthlessly evade tax by shifting on-paper profits beyond the markets where the transactions take place and where the tax is rightly payable. Aggressive intragroup pricing—transfer pricing, as it is more commonly known—is one way this can be done, especially for debt and intangibles, and it plays a major role in corporate tax avoidance. Transfer pricing describes the price a company charges another arm of its own operation as part of the supply chain to create a product. One subsidiary sells to another subsidiary, which can lead to the practice of large profits artificially being shifted along the supply chain to lower-tax jurisdictions. While the trade in physical goods and services can and has been successfully exploited by such schemes, it is the ever-expanding global trade in intellectual property and online services that is especially prone to manipulation of this type. Tech companies, for example, often maintain that their success is based on the quality of their R&D—their technicians, the priceless brainpower that developed the better mouse trap or the better app. Putting a dollar value on that can be extremely difficult for tax authorities to estimate. It can also be advantageous to a high-tech corporation if the price it puts on such intellectual property is high and if the bulk of revenue earned in a jurisdiction like Australia gets shifted to another jurisdiction where the company says the value of its IP really resides and where the IP behind the better app was developed, which can inevitably be a place with a lower tax rate.

Loan arrangements are another issue. Let's say a realistic rate for a loan from one division of a company to another is five per cent. If the rate that ends up being charged is in fact eight per cent, then the deduction that the company may enjoy via a tax concession for servicing its debt in a jurisdiction like Australia is made artificially high. Thus, tax is avoided and the company's profits are increased.

None of these tactics are necessarily new. What is different now, however, is the size of the multinationals, the huge growth in their share of the global economy and the sheer scale of tax avoidance, ripping untold billions out of communities right around the world. In Australia alone, a recent report to Senate estimates by the tax commissioner looked at this and suggested that the impact of these sorts of tactics is now measured in billions of dollars. That makes sense in terms of foregone revenue when you consider Australia's tax regime. Corporate tax is the second largest source of revenue for the federal government, at about 20 per cent, after personal income tax approaching 50 per cent. It is therefore the second-most important source of servicing funds for the Australian community, providing services such as health, education, child care and of course a welfare safety net.

In 2012-13, for example, 850,000 companies lodged tax returns in Australia and paid $66.9 billion—close to 20 per cent of all receipts, a proportion that has actually declined over subsequent tax years, while inversely the percentage contribution of personal income tax has continued to increase. Our critical exposure to the scourge of corporate tax avoidance is demonstrated by the fact that companies with a turnover of $250 million or more accounted for 60 per cent of corporate tax receipts in 2012-13, even though they represented just 0.2 per cent of all companies, and, according to the ATO, just 69 companies, with a turnover of $5 billion or more, accounted for a very substantial 42 per cent of the corporate tax base. This correlation clearly demonstrates our heavy reliance on corporate tax receipts, and the relatively narrow base that accounts for much of that revenue. It therefore takes only a handful of big companies to divert profits in an attempt to outflank the tax authorities, and, with no corresponding benefit to the wider economy, the impact on Australia's bottom line is potentially devastating.

Most of these companies are multinationals, and there is a growing recognition, both worldwide and here in Australia, that some of these massive corporations have been playing governments off a break. Tax law in most countries has simply not kept up with the ingenuity being brought to bear by the legions of lawyers and accountants whose job it is to find ways to play the system and win. International interest in dealing with the problem gained welcome urgency in the wake of the global financial crisis. With most countries strapped for cash to service their obligations, given the depth of the crisis and indeed the slow recovery, there was a broad recognition that reducing corporate tax avoidance was a worldwide problem that needed to be addressed, for too much was being lost, due to the behaviour of some multinationals that were at best cheating; at worst actively participating in criminal activity. The OECD got involved in developing approaches that countries need to take, the G20 also got involved, and I am pleased to say that Australia has been a key player in and around these forums in urging and developing the sort of concerted international action that is now being taken, of which this bill is an important part.

At the end of the day, in order for us to deal with multinationals that decide they wish to avoid their tax obligation, we need to take action. That is why our record so far is a proud one, of around $2 billion being clawed back in this financial year alone, and the measures discussed in this bill today will only strengthen that regime. I commend the bill to the House.