

TERRY MCCRANN

ATO's transparency report cruels tax debate

Terry Mccrann, The Australian, 12:00AM December 9, 2017

I'm pleased to see the Australian Taxation Office has taken some of my advice in its accompanying statement on this year's so-called "Corporate tax transparency report", in now gently hinting that it is actually about as transparent as a solid lead wall.

It nevertheless still failed to do what it should have done if it took seriously its obligation not to publish misleading and even dangerous tax data which only serves to pollute the debate about tax, tax avoidance and evasion and the complexities of tax in a globalised world.

As I wrote early last year in relation to a similar exercise on the purported tax statistics of Australia's biggest privately owned companies, the Tax Commissioner, Chris Jordan, should have headlined the first pages of the report and his accompanying statement with the equivalent of a "product warning" (in this case, the product is garbage). And done so, in large red ink.

"Warning, these figures are published by legislative direction. They are not just meaningless but potentially grossly misleading. Absolutely no inferences can be drawn from them about any individually named company's tax affairs, and in particular its compliance or otherwise with both the letter and the spirit of its tax obligation."

I was being diplomatic. What a public servant really concerned with, well, serving the public should have written would have been much blunter. "They are garbage; pure garbage. They are being published only because we have been forced to prepare and publish them by (Labor and Green) politicians who are prepared to sacrifice not just fact-based debate but indeed the national interest to pander to uninformed, hysterical and even malevolent pressure groups."

As I explained, the data was something of a "triumph" from the tax office. It managed to be an endlessly repeated statement of the bleeding obvious and yet utterly meaningless and indeed worse, actively misleading and even false.

Now, with the private company data last year, Jordan failed to publish such a warning. Worse, he delivered inanities about the data promoting tax

transparency and providing the basis for a more informed debate. It not only did nothing of a sort, it actually dangerously polluted the debate. Even worse was some loose language from Jordan that “no tax paid does not necessarily (my emphasis) mean tax avoidance”, leaving the clear impression that no tax paid suggested tax avoidance.

There was a different tone in the latest statement, by Deputy Commissioner Jeremy Hirschhorn. The Jordan inanities were gone and instead Hirschhorn kicked off with some strong positive statements. “The companies whose information we are publishing today account for more than \$38 billion or almost 60 per cent of total company income tax payable in 2015-16, most of which was paid voluntarily (my emphasis).” He said the community should have confidence that the largest companies are being required to pay the right amount of tax on their Australian profits, and most do so voluntarily. “Australia has one of the strongest corporate tax systems in the world,” he added.

But more telling, was his discussion of the “no tax paid category”. In reviewing the data, “there may be a focus on the number of groups which paid either no tax or small amount of tax relative to gross income”.

So, the ATO does notice the rubbish published in The Age and The Sydney Morning Herald and broadcast by the ABC. But, in contrast to what Jordan had said last year, Hirschhorn stressed three things that it was “important to remember”.

- Corporate income tax is payable on profits, not gross income.
- In any given year a significant percentage of even the largest companies make losses, not just for tax purposes, but also for accounting purposes.
- (The data) reflects the tax returns as lodged, and does not reflect subsequent ATO compliance activity.

The first two were useful statements of the bleeding obvious — albeit, not obvious to too many in the media and not welcome to the malevolent interest groups. While the third “hinted” at tax avoidance, it at least avoided the ‘guilty unless you want to prove yourself innocent’ slur from Jordan. Hirschhorn also went on to discuss some real world dynamics which had cut taxable income in 2015-16 and so tax paid and indeed payable by companies, especially in the resources sector. What he could have done which he did not was to explain how this dynamic intersecting with the tax deductions associated with the

massive capital investment in the resources sector could entirely legitimately reduce a company's tax bill to zero.

So we got the usual breathless reporting about oil giants generating billions in income but paying no tax. Apart from the basic stupidity — you pay tax on taxable income after all legitimate deductions, and these oil giants have around \$200bn of capex deductions — in some cases the “no tax in Australia” was factually wrong.

Exxon might not have paid any corporate tax, but its Esso subsidiary paid \$238m in Petroleum Resource Rent Tax in relation to Bass Strait. Its partner BHP paid \$488m PRRT. And no, this did not merely serve to “prove” further tax avoidance, this time of the PRRT, by Exxon; BHP has other taxable PRRT-taxable oil and gasfields.

The other big point to stress, which it seems even the ATO has difficulty understanding, is that a 30 per cent tax-paid rate is no more indicative of non-avoidance than a zero tax rate is of avoidance.

Once you get to “taxable income” you will pay 30 per cent of that figure (25 per cent now for very small companies), less legitimate offsets. The real tax avoidance takes place before you get to taxable income.

To slightly modify what I concluded a year ago: thank you tax commissioner for providing us with the bleeding and slightly less misleading obvious.