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SENATE

ECONOMICS REFERENCES COMMITTEE

Wednesday, 18 November 2015


Terms of Reference for the Inquiry:

To inquire into and report on:
Tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia, with specific reference to:

a. the adequacy of Australia's current laws;
b. any need for greater transparency to deter tax avoidance and provide assurance that all companies are complying fully with Australia's tax laws;
c. the broader economic impacts of this behaviour, beyond the direct effect on government revenue;
d. the opportunities to collaborate internationally and/or act unilaterally to address the problem;
e. the performance and capability of the Australian Taxation Office (ATO) to investigate and launch litigation, in the wake of drastic budget cuts to staffing numbers;
f. the role and performance of the Australian Securities and Investments Commission in working with corporations and supporting the ATO to protect public revenue;
g. any relevant recommendations or issues arising from the Government's White Paper process on the 'Reform of Australia's Tax System'; and
h. any other related matters.
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ACTING CHAIR (Senator Edwards): I declare open this hearing of the Senate Economics References Committee's inquiry into corporate tax avoidance and aggressive minimisation by Australian companies and multinational companies operating in Australia. The Senate referred this inquiry to the committee on 2 October 2014 for report by the first sitting day in June 2015. The inquiry was subsequently extended to report by 30 November 2015. So far, the committee has received 125 submissions, which are available on the committee's website. Three submissions have been received as confidential. These are public proceedings, although the committee may determine or agree to a request to have the evidence heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or to disadvantage a witness on account of evidence given to a committee. Such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken, and the committee will determine whether it will insist on an answer, having regard to the ground on which it is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may also be made at any other time. A witness called to answer a question for the first time should state their full name and the capacity in which they appear.

I now welcome Ms Karen Moses and Mr Tony Principe from Origin Energy, Mr Andrew Seaton and Mr Michael Lawry from Santos and, via teleconference, Mr Lawrence Tremaine and Ms Anthea McKinnell from Woodside Energy. Thank you for appearing before the committee today. I ask you, Mr Tremaine or Ms McKinnell, if you would like to make a brief opening statement before I come to Santos and Origin.

Mr Tremaine: Thank you for the opportunity to address the committee today. We offer our apologies for not being able to attend in person. Woodside provided a written submission to the committee on 2 February 2015 and, at the committee's request, an additional submission on 31 July 2015. We are calling today to respond to questions you may have arising from our submissions.

At the beginning, I would like to highlight key points made in our submissions. As an Australian headquartered oil and gas company with approximately 3,500 employees, Woodside has a vested interest in the stability, fairness and competitiveness of Australia's tax regime, and we acknowledge that the payment of tax is a significant way in which we contribute to the Australian community. Woodside does not support the use of artificial structures that have no commercial purpose except the avoidance or minimisation of tax. We have robust governance arrangements and are committed to transparency and compliance with the law. We demonstrate this commitment by ongoing engagement with the Australian tax office and other revenue authorities.

In 2013 we entered into an annual compliance arrangement with the ATO, with respect to both income tax and petroleum resource rent tax. Within this framework the ATO and Woodside are able to raise compliance risks and uncertainties, in a relationship marked by mutual trust. Woodside supports changes to the Australian taxation laws, which address specific instances of tax avoidance or facilitate increased transparency and is committed to participating in the ongoing tax reform process.

In a post-mining-boom era a competitive corporate tax system will be one of the keys to Australia's continued prosperity. We thank the committee for the opportunity to appear and are happy to answer your questions.

Mr Seaton: Thank you for the opportunity to address the committee. Santos is a proud Australian company with a long history of responsible corporate citizenship. Our portfolio includes exploration and production interests in Australia, Papua New Guinea, Vietnam, Timor-Leste, Indonesia, Malaysia and Bangladesh. We are a
growing exporter of gas to the Asian region, with interests in three liquefied natural gas projects—two in Australia at Darwin and Gladstone and one in Papua New Guinea.

We do not have any marketing or transfer-pricing arrangements in foreign jurisdictions. We enjoy a transparent and open relationship with the Australian Taxation Office with real-time engagement in their risk-assessment processes. We disclose the structure and cash flows of all of our international operations to the ATO, each year, through its international dealing schedule.

We are pleased to appear before the committee and look forward to answering any questions you may have.

**ACTING CHAIR:** Thank you. Welcome to Origin Energy.

**Ms Moses:** Thank you for the opportunity. Origin Energy is an Australian company listed on the exchange and is one of the largest retailers in Australia, with 4.3 million customers, and one of the largest gas producers and electricity generators. We are Australian based. We fulfil all our tax compliance and reporting obligations across all taxes. We are transparent about our financial performance and report our tax payments and obligations in both our annual and sustainability reports.

We are Australian based for tax purposes. Most of our revenue is from energy retailing, which has low margins compared to the oil and gas industry, and our operations are predominantly focused on Australia and, to a lesser extent, New Zealand. Our arrangements between Origin Australia and any foreign subsidiaries are taken on an arms-length basis in compliance with Australian and foreign tax laws, and our foreign subsidiaries are subject to Australia's controlled foreign corporation tax regime, so the income is also taxable in Australia.

We are subject to annual investigation by the ATO and we have a cooperative compliance arrangement with the ATO for GST purposes. We understand that we are currently rated low risk and high consequence from the ATO, in respect of each of its tax liabilities. Thank you for your time today.

**CHAIR (Senator Ketter):** Thank you very much. I will go firstly to Senator Dastyari.

**Senator DASTYARI:** Thank you all so much for being with us here today. I want to acknowledge that Woodside and its CEO and others have been in contact with us and did make the offer of having a stand-alone day where they would have been able to be here, but the committee made the decision that it was more efficient to do it this way. Ms Moses, you outlined what your risk rating was by the ATO, which was low risk but high consequence—simply because of the size of the firm.

**Ms Moses:** Correct.

**Senator DASTYARI:** I assume that is the same for you, Mr Seaton.

**Mr Seaton:** That is right.

**Senator DASTYARI:** Is that the same with Woodside? Are you low-risk high-consequence taxpayers?

**Ms McKinnell:** That is right. We are a key taxpayer [inaudible].

**Senator DASTYARI:** The ATO puts you in four categories. The key taxpayer refers to the size of your corporation. Obviously, you are a key taxpayer but do you know if they have deemed you as a low-risk or medium-risk taxpayer?

**Ms McKinnell:** Woodside is a quadrant 2 key taxpayer in the ATO's taxpayer matrix.

**Senator DASTYARI:** Tell me if I am wrong. There are four categories: the key taxpayer, the low-risk taxpayers—okay, I see what you mean. That puts you in a different category from the others.

**Mr Lawry:** Santos is a key taxpayer as well. That is because of our high consequence, but it is the low risk. It is the best you can get.

**Senator DASTYARI:** There are two different ratings. One is about looking at how consequential your tax arrangements are. Obviously firms of your size are of high consequence due to the nature of the size of the entity. The second is where they look at whether you are a high-risk or low-risk entity. Mr Seaton and Ms Moses have told me that you have been deemed low risk. I just cannot get an answer from Woodside about whether they are deemed low risk or high risk.

**Ms McKinnell:** I can add to that. We are deemed low risk.

**Senator DASTYARI:** Good. Through this process there are a few. Ms Moses, is your firm currently under any kind of review or audit by the ATO in relation to your tax arrangements?

**Ms Moses:** We were always under audit from the ATO but not specifically. We have a review underway with APLNG on the PRRT.

**Senator EDWARDS:** What was that in English?
Mr Principe: I can explain that. At a minimum, there is an annual risk review that the ATO conduct in respect of our return. That review is currently being conducted by the ATO in respect of our 2014 and 2015 tax years.

Senator EDWARDS: But what does it relate to?

Mr Principe: It essentially relates to all of our income tax returns. Essentially, they will review our whole income tax return and ask us a number of questions.

Senator EDWARDS: Not unusual. It is in the sequence of what you would normally expect.

Mr Principe: Correct.

Senator DASTYARI: Mr Seaton, is that the same situation? Do you have any kind of other audit or other thing underway apart from the annual review?

Mr Seaton: No. In the ordinary course we have the pre-lodgement compliance review underway and that is all.

Senator DASTYARI: Ms McKinnell, is that the same for Woodside?

Ms McKinnell: Woodside is a little bit different because we have an annual compliance arrangement with the Australian Taxation Office which means that instead of audits and review we enjoy a real-time engagement with the tax office. We talk to the tax office before we lodge our returns and after we lodge our returns.

Senator EDWARDS: You enjoy an interaction with the ATO? That's great!

Senator DASTYARI: We structured the day the way we did because I wanted to pose a question to all three of you if possible, and thank you for coming first thing up this morning. As you know, as the day progresses we have other oil and gas companies that are going to be coming before us. All three of you are proudly Australian firms, and I wanted to get perhaps a bit of a sense of the challenges that your firms face in how you are structured as Australian entities. You are obviously aware of how some of your competitors are able to structure themselves in their international arrangements. Some of what they do, because of how you are structured and choose to participate, is not available to you. I ask each of you to draw on the international competitive space that you are in and this idea of how level a playing field it is internationally and whether or not the structures that others perhaps will be using make it harder for you to compete in that space when you want to play by the Australian rules.

Mr Tremain: I think that overall we are reasonably satisfied with the tax arrangements that we face. The greatest interest for us is to ensure that there is stability in our investment environment and particularly that, once investments are made, we can rely on those arrangements. There is nothing that I have to add with respect to the position of others. I can just say that we are reasonably satisfied with the tax situation that we face ourselves.

Mr Seaton: I would say that we do compete internationally. The most important thing for us is really the quality of the hydrocarbon resource that we are able to access. Typically, in jurisdictions around the world, the taxation regime reflects the risk-reward trade-off inherent in our business, such that more prolific hydrocarbon provinces tend to have tougher fiscal regimes. If it is a higher risk province for hydrocarbon exploitation, it tends to have a regime which facilitates investment. We weigh all these things up as we invest internationally. Projects need to stand on their own two feet based on that risk-reward trade-off. In Australia, we do not have any particular issues with the taxation regime. I could probably elaborate and start talking about company tax rates, but I think that would probably be outside the remit of what we are here to discuss today.

CHAIR: No—regale us!

Ms Moses: We are primarily only an Australian-invested company, so the joint-venture partners we are dealing with are seeking for investments to happen in Australia. We are always conscious of the quality of the resource, the quality of the commercial arrangements and the risk overlay that comes with projects from many parts, including certainty of taxation. It is fabulous for Australia to be able to present that certainty to joint-venture partners in order for them to make the decision that Australia is a place where they want to invest. The resource then has the capacity to be competitive elsewhere. That would be the conversation that we would be having with our joint-venture partners, rather than specific arrangements around how they manage their funding into the project.

Senator DASTYARI: I would like to make two points. One thing that is interesting about LNG for someone who is an outsider—obviously you are experts in this industry—is the nature of joint ventures and the fact that because of the size of the projects and the risk related to the projects you get so much interrelated involvement. On one level, there is the same competition for the quality of the hydrocarbons. Obviously that is a level playing field. If you have a good site, you have a good site. Some of that is hard work, some of it is luck, some of it is a whole bunch of other factors. You are competing with the same wage structure—

Senator BACK: It is more hard work than luck.
Senator DASTYARI: I am sure it is more hard work than luck. I am just saying that there are good projects and bad projects, and international events can sometimes change a good project into a bad project, based on things like international costs and pricing. Is there a concern, or should there be a concern, for the Australian LNG producers such as your companies—to what extent do the foreign multinationals have an advantage by being able to structure their financing in ways that are not necessarily available to you? Is that a concern?

Mr Seaton: It is not a concern for us.

Ms Moses: Access to capital markets is obviously for very large projects, so having the capacity to present certain cash flows to the capital markets is probably a more important concern.

Ms McKinnell: From a Woodside perspective, we are concerned about our own position and do not want to offer a view as to the position of others.

Senator DASTYARI: I am surprised. I would have thought that something like interparty related dealings and structures that your competitors are using, which are not necessarily available to you if you are structuring yourself as an Australian entity, would be something that you would be quite aware of and would have some kind of concern about. Just to finish up, because I am very conscious of the time, could I run through a couple of figures as well—just what is already in your public disclosures, the last financial year that you gave an annual report for. I know a lot of these were in your submissions, but I want to get my numbers right. Ms Moses, what was the tax that you guys paid last year? I think 2013-14 is the last year you have published—is that correct? Or have you published 2014-15?

Ms Moses: Just finding the number for you. I just do not have it.

Mr Principe: For the 2014 tax year our tax payable was $109,867,559.

Senator DASTYARI: So, let us say $110 million?

Mr Principe: Yes.

Senator DASTYARI: That was tax paid and you break that up into two different types of tax, right? Is that just your—

Mr Principe: That was just our income tax.

Senator DASTYARI: What was the resource rent tax?

Mr Principe: We did not have any resource rent tax liability.

ACTING CHAIR: Nobody did. Oops.

Senator DASTYARI: Sorry, I meant the petroleum tax.

Mr Principe: That is what I understood your question was about.

Senator DASTYARI: Good. So it was $110 million. Remind me—and I know these are public figures—what was your revenue?

Mr Principe: The Australian based revenue was $12,574,000,000.

Senator DASTYARI: $12.54 billion.

Mr Principe: Yes.

Senator DASTYARI: Mr Seaton, can I ask you for those same figures?

Mr Seaton: Santos's income tax expense—accounting income tax expense—in 2014 was $482 million. Actual tax paid in Australia was zero. Actual tax paid in foreign jurisdictions was US$177 million.

Senator DASTYARI: So, you paid no tax in Australia last year and you paid $177 million tax in foreign jurisdictions.

Mr Seaton: That is right, in US.

Senator DASTYARI: Can you explain to me how that $482 million gets to zero?

Mr Seaton: It is the difference between accounting and tax effect accounting. Over time, the accounting tax expense will equal the cash tax paid over time. But we have a timing difference which is driven by the heavy capital investment that Santos has been undertaking in the Gladstone LNG project, which has started to produce revenue only in the last month, and also in the Cooper Basin, where we have had a heavy capital expenditure.

Senator DASTYARI: When you say over time, what time period should we be looking at?
Mr Seaton: Over the life of the revenue; over the life of the project.

Senator DASTYARI: Are we talking about 30 years, or 40 years?

Mr Seaton: Depending on the project, 20 years or 30 years.

Senator DASTYARI: You are saying that you will be expecting that $482 million sometime over the next 20 years?

Mr Seaton: Yes, the tax will ultimately be paid. It is really a timing difference.

Senator DASTYARI: Mr Principe, that $110 million: that was the $110 million paid?

Mr Principe: Paid.

ACTING CHAIR: Mr Seaton, you might want to tell the committee how much you have spent in the last five years getting to a stage where you might be paying some tax.

Mr Seaton: We have been spending an average of about $3½ billion to $4 billion a year for the last five years on capital expenditure.

ACTING CHAIR: Right.

Senator DASTYARI: So $20 billion on capital expenditure. What was the revenue last year?

Mr Seaton: $3.4 billion.

Senator BACK: Against an expenditure of?

Senator DASTYARI: Sorry?

ACTING CHAIR: $20 billion.

Senator BACK: Against an annual expenditure capital?

Mr Seaton: Capital expenditure last year was around $3 billion.

ACTING CHAIR: But over the last five years?

Mr Seaton: The year before that it was $3.5 billion and the year before that $4 billion.

Senator DASTYARI: Ms McKin nell, can I ask you for those same two sets of figures for 2014—your tax paid and your revenue?

Mr Tremaine: In fact this is Lawrence Tremaine.

Senator DASTYARI: Sorry, Mr Tremaine; I was not sure who to address the question to. My apologies. Can I ask what your tax paid last year was in Australia?

Mr Tremaine: I am going to detail a number of taxes, so I will start with income tax. Income tax was a figure of $1,097,464,886. That was for the 2014—

Senator DASTYARI: So you get that $1.974 billion.

Mr Tremaine: That is right. PRRT, we paid, rounding, $31 million; royalties, we paid $252 million; and excise, we paid $108 million.

Senator DASTYARI: If I was going to add all those figures together, what figure would I get? It would be a very large figure. I am sure on the table you have already added them together.

Mr Tremaine: Funnily enough, I have not, but it would be close to $1.5 billion.

Senator DASTYARI: I thought it would be closer to $2 billion, wouldn't it? I thought you said you were paying $1.94 billion just in income tax. I had a figure of $1.974 billion just in income tax.

Mr Tremaine: It was $1.097.

Senator DASTYARI: Okay; sorry.

Mr Tremaine: So 1.1.

Senator DASTYARI: If we did the 1.1, you are saying it would end up being, in your opinion, close to 1.4 billion, give or take?

Mr Tremaine: That is right; 1.5.

Senator DASTYARI: That is in 2014?

Mr Tremaine: Correct.

Senator DASTYARI: And that is—

Mr Tremaine: That is—
Senator DASTYARI: actual tax paid?
Mr Tremaine: Excuse me; in different tax years, there are different taxes.
Senator DASTYARI: Of course. And that is actual tax paid? That is what you actually paid?
Mr Tremaine: Correct.
Senator DASTYARI: What revenue base was that off?
Mr Tremaine: I do not have that number directly in front of me; Anthea may. It was about $7 billion in 2014.
Senator DASTYARI: I appreciate you are giving us some rough figures, and I completely respect and understand that. You are doing your best to give answers so I am not going to hold you to the last dollar, but you are saying that, off a revenue base of about $7 billion, you paid something close to $1.5 billion in tax last year?
Mr Tremaine: Correct.
Senator DASTYARI: I have been asking this question of many people over the entire course of this inquiry and they are the best set of figures anyone has given me, Mr Tremaine, so I hope that does not get you in trouble. That is all from me.
Mr Tremaine: I am very comfortable; we are here to help.
Ms McKinnell: I just wanted to confirm one point. The numbers that Mr Tremaine gave you are in Australian dollars, the tax payments. The revenue he gave you was in US dollars. We just reported in Aussie dollars because those are the actual payments we make. I just wanted to be clear about that.
Senator EDWARDS: The tax commissioner will be up at the end of the day and I am sure he will point out any of the deficiencies between what he has receipted and what you have told us about.
Senator BACK: Or excesses, Senator.
Senator EDWARDS: I doubt he will tell you about the excesses.
Senator BACK: There might be excesses.
Senator EDWARDS: Thanks for coming everyone. I am going to pose a question to the three of you. Just in general terms, base erosion and profit shifting is a problem for every country. As you are probably well aware, the G20 is, in actual fact, grappling with this issue. This government, I guess, is probably at the forefront of what this committee is investigating, which is the offshoring of profits and not paying tax where profits are earned. In light of that, and the three of you saying in your evidence this morning that you operate lawfully within the bounds of the policy and the legislation which exists in this country, I would like to put you in a position where you may be sitting opposite Treasurer Morrison to give him some advice as to where you think Australian taxation laws are adequate and that they do ensure that companies pay their taxes where they are required to—not. You can get into a bit of theology, if you like, but perhaps that is a question on notice. Who wants to take that one up first? Mr Lawry, you seem to be itching.
Mr Lawry: Not over the question, Senator.
Senator EDWARDS: All right. Well, that is a nice slap down. Who would like to take that one on first?
Ms Moses: I have a view. I think it is absolutely appropriate that it is an issue that gets addressed internationally because it is international—no single country can solve this issue. So Australia's position, in participating and seeking an international response, is absolutely the right one. The issues are vexed. You need to make sure that the source of production and the source of income do not end up tripping over each other and you do not end up with double taxation; that would make Australia uncompetitive, rather than giving clarity around it. But I can only encourage you to continue to try to find a solution for it.
Senator EDWARDS: Do you want to have a go now, Mr Lawry?
Mr Lawry: Certainly. I think there are two aspects. The most difficult aspect, and one that requires international collaboration, is: where should profits be taken to be derived, as we move into the internet age? That requires a review of the current laws and for everybody internationally to play the same game. As to the other things that are important for international taxation, I guess the critical issue is the debt-equity rules that apply. We have a set of rules and, as we see it, they are being enforced. We have seen recent litigation. It is the subject of close attention in all of our risk reviews. So the essential question there is: 'What is an appropriate debt-to-equity ratio?' because, once that question is answered, it seems to be being enforced.
Senator EDWARDS: No worries. Ms McKinnell?
Ms McKinnell: I would echo some of the earlier comments. From a debt perspective, a consistent international approach is very important, and unilateral approaches by particular countries just create the
opportunity for arbitrage or double taxation. Again, it is important to clarify where taxing rights should arise around the world, and an approach to taxing where economic value arises is important, and, in the electronic age, that is sometimes difficult to determine. I think we are broadly positive about debt, but it needs to be an international approach.

Senator EDWARDS: Then, if I can come back to you, Ms Moses: is your business at any disadvantage internationally by virtue of Australia's current taxation laws?

Ms Moses: The disadvantages that we see are when there is more risk created for the business because of the uncertainty—so the perception of the uncertainty of the Australian tax regime.

Senator EDWARDS: Do you have any international marketing hubs?

Ms Moses: We do not have any international marketing hubs that are operational. We have operations in Chile. We have a utility-scale solar project. That is an operating business. We have operating businesses across the Pacific and we have—

Senator EDWARDS: It is not a tax haven, though, is it? It is an operational—

Ms Moses: Yes, all of them are operational activities.

Senator EDWARDS: Then, Mr Lawry, is your business at any disadvantage? Do your competitors globally have an advantage over you because of tax treatments in other jurisdictions, whereas you are penalised under current legislation in this country?

Mr Lawry: No, I do not believe so.

Senator EDWARDS: Then, Ms McKinnell, could you give your comment on that?

Ms McKinnell: I would agree. From the point of view of the Australian tax rules, we do not deal at a disadvantage in relation to other companies which may be doing business in Australia.

Senator EDWARDS: Do you have any hubs outside of Australia where you market your commodities?

Ms McKinnell: We have a Singapore marketing entity, which was set up in 2013. Can you hear me okay? It seems to be echoing.

Senator EDWARDS: It is not the best line, but we are sort of getting the gist of things. In Singapore why did you set that up in the year 2013?

Ms McKinnell: From the perspective of the Singapore office we set it up to actively participate in the growing spot and short-term LNG markets and to source new supplies of LNG from outside Australia and sell on international markets. In addition these operations to support the market in some cargoes from Woodside's Australia LNG production to international unrelated parties.

Senator EDWARDS: That is because that—

Ms McKinnell: Perhaps if I can—

Senator EDWARDS: Go on.

Ms McKinnell: In order to understand the materiality of this entity, as you heard earlier on, the revenue for the 2014 year was some $7 billion. The Singapore marketing hub 2014, the total trading revenue since inception was that US$106 million. So it is a very small hub which has very limited activities.

Senator EDWARDS: But presumably that is the money that the marketing division made and it paid its tax in the jurisdiction in which it made it?

Ms McKinnell: That is right. We have five people located in Singapore, and the economic value related to that particular activity is in Singapore, so it buys and sells cargoes internationally and assists with the sale of some cargo that is produced in Australia.

Senator EDWARDS: So that marketing hub does not exist anywhere in Australia, does it? That seems to be the nerve centre for all of that type of activity in this South-East Asian region.

Ms McKinnell: That is right. Singapore is a hub for LNG trading, and we thought it was appropriate to locate people there, to take advantage of the growing hub in Singapore. One other point to make is that there are the total fees charged by that Singapore subsidiary to support the sale of Australian cargoes with $640,000 in the 2014 year.

Senator EDWARDS: I get it. The base tax in Singapore is 17 per cent, which is substantially less than Australia's company tax rate of 30 per cent. Do you pay 17 per cent in Singapore, or have you negotiated another rate?

Ms McKinnell: I would need to make a response to that in camera.
Senator EDWARDS: I do not think it is that crucial. I guess the answer to that is: yes, you have a different tax arrangement. Then, I suspect—I do not think it is any secret in this sector that it is around about five per cent. But I am not saying that is yours. So you are not tempted then—

Mr Tremaine: Excuse me, this is Lawrie Tremaine. I just wanted to interject just for a moment and point out, in addition to the comments Anthea has already made, that since inception we have made a loss in Singapore, so the tax rate is hardly relevant. It is also clear that there is no attempt here or suggestion here of us shifting profits from Australia into Singapore.

Senator EDWARDS: Not yet.

Mr Tremaine: Well—

Senator EDWARDS: I am just being mischievous. It is okay. You cannot see my facial expressions. You are lucky. The issue is that there are people who are accused of doing all of these things, but you are not tempted to repatriate profits from Australia to Singapore. I am trying to give you an opportunity to speak on the public record on this, Mr Tremaine. Please don't be frightened to answer.

Mr Tremaine: No, I am not. I am not frightened at all. I am going to restate some of the comments that Anthea made and I must admit it is difficult for me to hear her down the line as well. The bulk of transactions which go through our Singapore office are in fact cargoes that are not sourced from Australia, so there is no connection to Australia at all. The Singapore office does provide some services for sale of Australian based product. But, as she said, the service revenue associated with that was just $640,000 in 2014. So it is a very small service charge. It reflects about 0.1 per cent of the revenue through those sales, which is a very small percentage as a commission that is passed through to Singapore. And, as I said, we have made a loss in Singapore since inception.

Senator DASTYARI: I have a follow-on question about the tax rate that you pay in Singapore. Correct me if I am wrong, because we have been through this with others: that is information that I can obtain publicly if I go into the registry in Singapore? This is not secret information in Singapore, but you are not prepared to give that to us now?

Mr Tremaine: No, we have a specific agreement with the Singapore government which prohibits us from providing information about our tax arrangements in Singapore without their consent. We are happy to share information, but for that reason, as Ms McKinnell said, we would prefer to do that in camera.

Senator EDWARDS: I understand that—that is a specific arrangement that you have with the Singaporean government—

Senator DASTYARI: I find it hard to believe, though, that it would be different to the arrangement that BHP, Rio and others would have with us.

Senator EDWARDS: They may not have a non-confidentiality agreement, but I think it is widely known that in this sector the tax rate applicable to trading on oil, gas or whatever is around five per cent. So—

Senator McALLISTER: I wonder if that—

Senator EDWARDS: I am not saying that is what Woodside's arrangements are.

Senator McALLISTER: Chair, as Woodside have indicated that they are willing to provide the information in camera, I wonder if the way through this is for them to provide that information to the committee on a confidential basis, on notice, in writing? Would that be—

Senator EDWARDS: On notice. I am not going to clear this room.

Senator McALLISTER: No, I understand that.

CHAIR: Ms McKinnell, I think you have made that offer, so are you prepared to take that on notice on the basis that it is provided to the committee in confidence?

Ms McKinnell: Certainly.

CHAIR: Thank you. Senator Edwards, do you have any further questions?

Senator EDWARDS: Thank you, Chair. I will acquiesce to your stringent time frames.

CHAIR: Senator Back has some questions.

Senator BACK: Ms Moses, in your submission you made the observation that Australia has one of the most complex and comprehensive tax systems in the world, which requires simplification not expansion. Could you expand on where you see that the tax system could be simplified to the advantage of the sector, please?
Mr Principe: I am happy to address that. As part of the OECD work, it was recognised that the controlled foreign corporation rules that we have are consistent with what they would regard as being quite robust. But, having said that, it has been acknowledged—and there has been work done previously in respect of the CFC rules, where amending legislation was previously tabled but has not been passed—that that is an area, for instance, that could be simplified in terms of the rules that apply to controlled foreign corporations.

Senator BACK: Is that it?

Mr Principe: That is one example. There are probably a number of other ones, but that is one that comes to mind as referable to this particular inquiry or this hearing.

Senator BACK: Can I ask either individually or through APPEA: is there or has there been engagement with the Australian Taxation Office and the Treasurer, for that matter, in terms of bringing into effect these simplified tax laws?

Mr Lawry: I might speak, I think, on behalf of some of the activities of APPEA. APPEA concentrates in its discussions with Treasury on industry issues. The important issues to us are the capital expenditure rules and the operation of the PRRT regime rather than things such as funding. The taxation of financial arrangements is a very complex issue. The controlled foreign corporations issue, as Tony mentioned, is also complex. We concentrate on the industry-specific issues.

Senator BACK: I will go to part of the opening statement from the Santos colleagues. I think, Mr Seaton, you made the observation about exploration and production drilling. I want to go to that, but I just want to draw on the McKinsey report from 2013. I preface it with the comment from McKinsey, if they are correct:

Since … 1989, Australia has produced 342 million tonnes of LNG—generating about A$68 billion in taxes and royalties.

They say we currently are around eight per cent of global production, but by 2020, all going well, we could get to 25 per cent, where the predicted annual demand is 470 million tonnes by 2030. In the light of what has happened between 2013 and 2015, McKinsey might want to represent that. This is the question I want each of you to respond to. This is their quote:

Until recently, Australia was considered one of the most attractive destinations to develop LNG. However, its cost and risk profile, combined with new … players on the international scene, is making it harder for Australia to retain this preferred position. For instance, for new projects it will cost 20-30 percent more to deliver LNG from Australia to Japan than competing projects in Canada.

My question to you in the context of this inquiry is: where is Australia being placed more at risk—in competition to Brazil, where the Chinese have now bailed Petrobras out; the Middle East, where we know the sheikhs are very active; or other markets? I want to know, in the context of this inquiry: how do we ensure Australia remains competitive? I know there are other factors—labour and other factors. I will not focus on those. I want to focus on the tax effects of Australia remaining competitive, please. Perhaps, Mr Seaton, you might want to have a go first.

Mr Seaton: I am not familiar with the McKinsey report and the methodologies employed there, but the comment I would make is that those comments by McKinsey do reverberate with me, in that Australia has become a very expensive place to do business. The cause of that, I believe, is labour productivity and practices more than the tax regime as such. The cost of building an LNG plant in Australia or undertaking offshore exploration and production activities in Australia is certainly more expensive than it is even in other developed economies such as the US Gulf of Mexico. But again, in the context of this committee, I would not sheet it all back to the taxation regimes.

Senator BACK: Would the Woodside colleagues be kind enough to make a comment?

Ms McKinnell: I would largely agree with that from a non-tax perspective. If we are looking at tax specifically, one area where Australia could be more competitive is in the write-off periods for capital investments. Building LNG plants is very capital intensive, and one thing that does make a difference to the economics of these projects is the time over which you write off your assets. Australia does sit a little bit behind some of the other countries in relation to the write-off periods allowed for assets. So that is one area where potentially we could become more competitive.

Senator BACK: Your company does not operate in Canada, as I understand it, Ms McKinnell.

Ms McKinnell: We have a potential project in Canada but no operating assets in Canada; that is correct.

Senator BACK: I wonder whether you have a comment, Ms Moses or Mr Principe.

Ms Moses: I think it is appropriate not to comment on the relative labour or productivity costs et cetera because that is a society decision. From a tax regime perspective, moving forward, particularly given the oil price world that we are now looking at and the fact that we are competing with such an abundance of lower cost...
resource available in the US, again I would point to a certainty of the tax regime, a certainty of the royalty regimes and the rules around which the PRRT works—what are deductible expenses; what is the true value of the resource?—and make sure that we do not end up with double taxation and confusing taxation. From an incremental investment moving forward, I think that that is an area where Australia could give ourselves better opportunity for brownfields investment to continue in Australia.

**Senator BACK:** I do want to go to the contrast between ourselves and the Canadians. Our two economies are not dissimilar. Is there anything that may be required here in Australia to reduce that gap of 20 to 30 per cent in new projects, costwise, in contrast to Canadian projects? Does any one of the three of you have sufficient experience in the Canadian market and the Canadian tax system to be able to advise us where the differences might be?

**Ms Moses:** No.

**Mr Seaton:** We are not active in Canada.

**Ms Moses:** We are not active in Canada either.

**CHAIR:** I have been listening to the evidence you have been providing in relation to Senator Dastyari’s line of questioning, in particular the issue of a level playing field between Australian companies and foreign based multinational companies. Ms Moses, would you, for example, be happy with foreign based multinational companies operating in Australia on the lower rates of pay for their workers than Australian based companies?

**Ms Moses:** No.

**CHAIR:** Why it is that you are somewhat ambivalent about this quite significant advantage which foreign based multinational companies have in terms of related party transactions and the effect on their tax liability? That seems to me to be a significant advantage, and I would be interested in your views about that.

**Ms Moses:** I can only respond to that from the activities that we undertake, and we do not see that evidence.

**CHAIR:** You do not read the newspapers?

**Ms Moses:** We do not see the evidence of that in our business.

**CHAIR:** In your business.

**Ms Moses:** Looking at the oil and gas production area, we do not see the evidence of that. What is the taxing regime that is appropriate for supporting investment is a decision, I think, from a national—

**Senator DASTYARI:** You do not seek that on court judgements? You say that you do not see it in your business, but there are Federal Court judgements. You see them surely, Ms Moses?

**Ms Moses:** I was asked the question from a competing perspective, from a business competition perspective. Obviously, from an Australian perspective, you want equity.

**CHAIR:** We want a level playing field.

**Ms Moses:** Yes, you do want a level playing field.

**CHAIR:** Can I ask the same question of you, Mr Seaton? What are your views about this comparative advantage that some companies have?

**Mr Seaton:** We as a company do partner with many multinational corporations and, again, in many ways we benefit from the flow of capital into Australia. We benefit from the knowledge, the expertise, the know-how of some of those corporations, and that is why we choose to partner with them. There are clear tax laws in place and, to the extent that companies comply with those laws, I do not see that it is our position to comment. If they do not comply with those laws, then the process—

**CHAIR:** What if they do not comply with the spirit of the laws?

**Mr Seaton:** It is not really something that I can comment on. I can talk about Santos and I can talk about the benefits of multinational investment. I talked earlier about our industry being a balance of risk and reward, so it is normal that we joint-venture with partners who bring capital but, more than just capital, bring expertise to the table as well, and that is where we as a nation benefit from the investment from some of those foreign companies.

**CHAIR:** Ms McKinnell, do you have a comment in relation to my question?

**Ms McKinnell:** Yes, I would echo some of the earlier comments—the person who did answer your comment on how to keep those circumstances rather than other people's. I think we are very positive about there being a level playing field across taxpayers, and where taxpayers are not compliant with the law we would expect there to be action taken.

**CHAIR:** Do you have any multinational partners in your business?
Ms McKinnell: Absolutely, we partner with a number of multinationals in the North West Shelf. For example, Chevron, Shell, BHP, BP and MIMI are partners in the North West Shelf.

CHAIR: I understand Senator McAllister has some questions.

Senator McALLISTER: I have just a couple. I wanted to give you the opportunity, I suppose, to engage with the public policy debate about the appropriate taxation of activities in the resource sector. Earlier in your testimony, you indicated that Santos actually paid zero tax in 2014. I understand that taxation arrangements are complex, but I think it would be useful for ordinary citizens to understand what the public policy justification is for a zero rate of taxation for a company in your line of business.

Mr Seaton: Our business has long lead times between exploration—where we discover resources—and then the appraisal of those resources, subsequent development and then the revenue phase. For our company, specifically, we have been investing very heavily in the Gladstone LNG project and also in the Cooper Basin. With Gladstone LNG, we actually acquired the resources underpinning the project in 2005. It was not until late 2010, after significant expenditure on appraisal and front-end engineering design, that we sanctioned the project. Five years later, in October 2015, we have realised our first revenues from the project. Those revenues will flow for the next 20 to 30 years to come. The tax revenue to the nation will come with those revenues.

Senator EDWARDS: It was last month that they started to roll, didn't they?

Mr Seaton: Yes. It was October—last month. That is right.

Senator EDWARDS: It has been a long and tortuous affair.

Mr Seaton: It has been a very long time.

Senator McALLISTER: Chair, I am conscious that we only have five minutes until the end of this session.

CHAIR: Senator Edwards, Senator McAllister has the call.

Senator EDWARDS: It is a great South Australian company; I want to hear from them.

Senator McALLISTER: Me, too.

Mr Seaton: It is going to be a great project. We have invested many, many billions of dollars. Obviously, we have created a lot of wealth through employment and through using local contractors. We have injected a lot of benefits into the local economies in places like Gladstone and Roma. So, as a corporate citizen, I stand on our record. But it is the nature of the ability to depreciate large capital expenditures which has meant that, in the 2014 year, we did not pay cash tax in Australia.

Senator McALLISTER: But you accrued an obligation to pay tax.

Mr Seaton: That is right.

Senator McALLISTER: Do others have a comment to make on that? Do you want to go on the record about the public policy issues at play here?

Ms Moses: Our story is almost exactly the same story. We are part of the 37½ per cent of the AP LNG project, which has not quite gotten its first cargo yet but is very close. We have invested significantly in that project since 2007. So we are keen to see it turn into a project that is producing revenues and producing profits, for which we will be very happy to be paying our fair share of tax. Obviously, royalties have been paid on gas that has been produced from a domestic perspective through that process. I would just reiterate the same point around the time that it takes the investment horizon and the appropriate recognition of that in the public policy regime from an income tax perspective, from a royalty perspective and from a PRRT perspective as well.

Senator McALLISTER: The principal benefit, from a public policy perspective, is simply that, by deferral of the tax obligation, the necessary cash flow is available for the development of the business. That is it, essentially? Can I ask now about the annual compliance agreement with the ATO. I think Woodside representatives indicated that you have such an agreement. Sorry, I missed whether you also do, Ms Moses.

Ms Moses: Yes, it is a similar agreement for GST.

Senator McALLISTER: For GST only. Right. Mr Seaton or Mr Lawry?

Mr Lawry: We do not have an advanced compliance agreement. We just operate under the pre-lodgement review process.

Senator McALLISTER: I want to ask how that process works. It is a relatively new set of arrangements, I understand, for the ATO. Can you tell me about what that means?
Mr Lawry: The idea is that it is contemporaneous so that we do not wait 12 months after we have lodged a return. We have an agreement with the Australian Taxation Office on the things that we will disclose to them, so transactions over a certain threshold are detailed. We have regular meetings during the course of the year.

Senator McALLISTER: Say, four or five meetings?

Mr Lawry: Three or four. Then we lodge our tax return with the Taxation Office, and we are dealing with the same people, who build up a body of knowledge and understanding of the business. Then, when the return is lodged, they issue a comprehensive list of information that they seek, so they will look, for example, at all of our overseas companies’ balance sheets, profit and loss accounts and tax details, and all of our overseas transactions with Australia. They will look at significant commercial arrangements that we have entered into during the year. They will look at how we have spent our money and whether what we have called exploration is exploration. As part of that process, we just get comfortable with one another, and I think it has been mentioned earlier that we build up a significant amount of trust that we are both being transparent with each other. The consequence of all of that is that they give us a risk rating.

Senator McALLISTER: And the decision about what documentation to provide is triggered by a decision by the ATO rather than you?

Mr Lawry: They ask for information and, in the case of Santos, we would—I think without exception—say, 'Well, that's a reasonable document for us to provide to you.'

Senator McALLISTER: So the sequence of events is that they identify documentation that they would like to see and you make a response to that request?

Mr Lawry: No, it is a little bit more mutual than that. We might say, 'Look, we have entered into a significant transaction during the year, and these are the relevant documents that will allow you to have an understanding of the nature of that transaction and to think about what the tax consequences of that transaction might be.' So it is not, 'Stand and deliver.' It is very much a two-way thing. We try to be transparent, and by that I mean anticipating the sort of information and understanding that they might require.

Senator McALLISTER: Thanks. Ms Moses, were you looking enthusiastically at me?

Ms Moses: No. It is just that it is a good process.

Mr Principe: I would concur with the comments that Michael made earlier. Ours is the same in the sense that, if there is something that we are seeking clarity on, we might ask a question of the ATO. Alternatively, they will come and ask us. If there is public information that something is happening in the industry, we will get questions from the ATO. We may prompt it. We may go to the ATO and say: 'This is the activity that's occurring. We want some clarity from you. What's your view on this particular matter?'

CHAIR: Thank you, ladies and gentlemen, for appearing before us this morning. Ms McKinnell, we normally set about a two-week period for responses to questions taken on notice. Are you happy to provide that response to Senator Edwards's question within two weeks?

Ms McKinnell: Yes, I am.

CHAIR: Thank you again, ladies and gentlemen.
CONDON, Mr John, Assistant Tax Director, Fuels Asia Pacific, BP Australia Pty Ltd
HEPWORTH, Mr Simon, Chief Financial Officer, Caltex Australia
HOLMES, Mr Andy, Chief Operating Officer, Fuels Asia Pacific, and Country Head, BP Australia Pty Ltd
LIM, Mr Peter, Executive General Manager, Legal and Corporate Affairs, and Company Secretary, Caltex Australia
WYATT, Mr Scott, Chief Executive Officer, Viva Energy Australia Pty Ltd

[10:03]

CHAIR: Welcome. Thank you for appearing before the committee today. I invite you to make a brief opening statement should you wish to do so.

Mr Holmes: As I said, I am representing BP. I am also the country head for Australia. I am a permanent resident of Australia, and I live and work in Melbourne, where I run BP's global aviation interests and the Asia-Pacific fuels business which includes China. I welcome the opportunity to speak on our submission today. Before doing so, I would like to spend a brief moment to explain BP's operations in Australia. BP have been here since 1919, and we are proud of the contribution we make to the communities where we operate. Today we are involved in a range of activities including oil and gas exploration and production, refining crude oil in Western Australia and marketing petroleum and lubricants across Australia.

It is a large business, and the figures are in the submission in front of you. Over the last five years we have averaged 7,000 employees, turned over nearly $102 billion with expenditures of $101 billion and paid around $32 billion in taxes including income tax. I mention these numbers because they illustrate the large volume, small margin nature of the industry in which we operate. We have also readily disclosed these figures because BP consider transparency an important requirement to increasing trust in the tax systems around the world. We believe the right information can help unbundle the complexity of corporate tax. BP is actively supporting the Board of Taxation's development of a voluntary code of tax transparency.

Obviously, a significant amount of BP Australia's expenditure year on year is the cost of buying crude oil. We purchase that crude oil from the BP group's trading house in Singapore. BP Singapore started as an oil-refining and marketing company in 1966 and has evolved to become a leading oil-trading hub for BP in the Eastern Hemisphere. It remains in Singapore because that is where the crude oil and products market is. It consists of refining and storage, a strong participant network and financial and trading infrastructure for the whole industry. The relationship between BP Australia and BP Singapore is a totally commercial one. It centres on market based transactions to supply crude oil and product for our businesses in Australia.

The oil-trading business is a deep and liquid one with highly transparent pricing, and it is arguably the most transparent in the world. The amount that BP Australia pays for the crude oil and products to BP Singapore is the market price, and all revenue from the sale of products to Australian customers by BP is recorded by BP Australia.

I am aware of the committee's interest in trading hubs, so it may also be of interest that BP Singapore employs 700 people and has an annual turnover of approximately US$55 billion and that 65 per cent of its business relates to BP in Australia. Reflecting the highly competitive nature of the trading business in BP Singapore, the net margin for that business actually can go from a loss to a profit. In some years recently it has made a loss; in some years a profit. Overall it averages only 0.2 per cent net margin.

Finally, we consider Australia to be widely recognised for having robust domestic tax legislation along with a strong and independent regulator in the ATO, and we believe additional endeavours to improve transparency should help enhance community confidence in our system. Thank you.

CHAIR: Thank you, Mr Holmes. Mr Wyatt?

Mr Wyatt: Good morning, senators, and thank you for the opportunity to attend this inquiry and address any questions regarding our company and its taxation arrangements. Given that we are a relatively new company, I want to use my opening remarks just to give a brief overview about our business and our priorities. Viva Energy was formed just over 12 months ago following the purchase of Shell Australia's downstream business by Vitol Investment Partnership. This is a Vitol led investment fund which has made a number of strategic but unrelated investments around the world on behalf of its various investors. Vitol is the world's largest independent trader and is also our supplier of crude oil and fuels into Australia.

Viva Energy's operations include our refinery at Geelong, which supplies of over half of Victoria's fuel requirements, a national network of nearly 900 Shell branded service stations and more than 20 import terminals.
around the country. While we continue to sell under the Shell brand in Australia and are a supplier of jet fuel to Shell Aviation, it is important to note that Shell no longer holds any interest in our company. The decision by our new owners to keep Geelong operating as a refinery was an unexpected but welcome outcome for our business following the closure of Shell's refinery in Sydney and decisions by other manufacturers in Geelong to cease their operations. This commitment provides a future for the 750 employees and contractors that depend on our continued operations for their livelihoods.

While the depreciation of the Australian dollar generally helps improve refining margins and has provided us with a welcome uplift in 2015, there remain many longer term challenges which we need to address so that we can survive the inevitable cycles that are typical in our industry. On average, the cost of refining in Australia is now more than double that of our international competitors. While it is unlikely that we will be able to bridge this gap completely, we see sufficient opportunities to be optimistic about the future for our business in Australia. As part of a $1 billion investment program we are investing more than $200 million in Geelong over the first two years of our operations, with a focus on improving performance, production and productivity. Our investors are providing considerable support to this improvement program and, by way of example, they have already helped materially reduce the cost of crude supply, with more benefits ahead through the construction of new crude storage capacity and ensuring greater integration with the Vitol supply chain.

While our first four months of trading in 2014 were significantly impacted by the heavy fall in the oil price together with various acquisition costs, our operating performance in 2015 has been much stronger, and we expect to become a significant Australian taxpayer towards end of 2016 and beyond. In the short time we have been a stand-alone company we have established a good relationship with the Australian Taxation Office and are currently working towards gaining an advanced pricing arrangement for the payments we make to our overseas related parties. We have been transparent with the tax office about our financial and tax performance and make the same commitment more broadly to the community. We believe that taxation policy is a matter for the Federal government, and Viva Energy abides by the current tax laws and will comply with any future requirements. We understand the important role of transparency in enabling the federal government to effectively perform the role.

In summary, we are very excited about the future of our new company and the commitment of our owners to investing in our business here in Australia. This will create jobs, improve profitability and ensure we remain a major contributor to the Australian economy in the years ahead. Thank you.

Mr Hepworth: Mr Lim and I welcome the opportunity to appear as witnesses before the committee today and to share some elements of the Caltex story. I propose to read a brief opening statement to assist you in your understanding of the Caltex business and, with your indulgence, I have a couple of documents here that might be useful in assisting the senators in their inquiry. One is a fact sheet on Caltex, and the second is a copy of the Caltex tax transparency statement.

CHAIR: I do not think there would be any objections to those documents being tabled.

Mr Hepworth: As the only Australian ASX listed downstream petroleum company, Caltex can trace its roots back some 115 years to 1900. We directly employ more than 3,000 people in operations across the country in all states and territories. We provide one-third of all transport fuels in Australia, and that is across jet fuel, road transport and marine. It has as its core business strategy a sole focus on the Australian market and, thereby Australian customers. Quite literally, Caltex keeps Australia moving, with fuels for industry, manufacturing, farming, logistics, mining and, of course, our daily lives.

In relation to Caltex's taxation payments—the reason we are here today—our company is one of the largest taxpayers in Australia, paying on average $113 million in income tax to the Australian government annually over the last five years. Importantly, Caltex complies at all times with Australian taxation law and takes a constructive, no-surprises approach with the Australian tax office, as we endeavour to do with all of our stakeholders across a range of issues.

As a snapshot, in 2014 Caltex had revenues of $24.2 billion—a net profit of approximately $33 million, reflecting the significant fall in the crude price in that year—and we remitted total tax of $6.7 billion to the tax office. In breaking down these taxation payments for the benefits of senators, they include excise duty of $5.1 billion, net GST of $1.3 billion, income tax of $99 million.

Senator DASTYARI: Mr Hepworth, can you just run through that again. This is 2014 you are talking about?

Mr Hepworth: Yes, 2014.

Senator DASTYARI: And you are saying the total paid was?

Mr Hepworth: Total tax remitted was $6.7 billion.
Senator DASTYARI: That is paid, not accounted.
Mr Hepworth: That is paid.
Senator DASTYARI: We are talking about the two different measures.
Mr Hepworth: That is physically paid.
Senator DASTYARI: $6.7 billion in tax.
Mr Hepworth: $6.7 billion, which included excise duty of $5.1 billion, net GST of $1.3 billion, income tax of $99 million, customs duty of $57 million and payroll tax of a further $22 million.
Senator DASTYARI: And that was off a revenue base of $24 billion, did you say?
Mr Hepworth: Yes, $24 billion. I do want to make the point that revenue is not an appropriate measure when you are dealing with commodity prices.
Senator DASTYARI: Yes, of course.
Mr Hepworth: It is, of course, profit before tax which is the key measure.
Senator DASTYARI: The question this committee has is the relationship between the measures and tactics that are sometimes used to give the appearance of, which I am not proposing is happening here. I am saying that part of the challenge of this committee has been getting to the bottom of that. But you are right: they are very different measures.
Mr Hepworth: And the industry, to that point, is one of high volumes and low margins accompanied by significant capital outlays and vast fluctuations in the global oil price. To provide even greater context around Caltex's contribution on this front, our effective tax rate for 2014 was 25.3 per cent and, over the last three years, has averaged approximately 29 per cent.

As an Australian company we recognise the role our taxes play in the ongoing economic and community development initiatives of all levels of government in Australia. Accordingly, we support measures around transparency. Senators would be aware that the ATO will publish an annual summary of an entity's taxation information, starting next month with the 2014 year. Ours for that year is already on our website and that is what we have just handed around.

Mindful of our support for transparency, Caltex has long maintained a constructive and transparent relationship with the ATO—a no-surprises approach to engaging with all key stakeholders provides the basis for this ongoing relationship. Accordingly, we have consistently been rated by the ATO as low-risk/high-consequence since the inception of the ATO's risk differentiation framework. In fact we are one of the first adopters of the ATO's pre-lodgement compliance review process, and this provides the basis for regular interaction with the ATO. So, along with Mr Lim, we look forward to assisting you in answering your questions today.

CHAIR: Thank you very much. Before I hand over Senator Dastyari, I wanted to ask each of you, just very quickly, have you been reviewed or audited by the ATO in relation to transfer pricing, royalties, intellectual property payments or any other aggressive tax planning activity—perhaps starting with you, Mr Hepworth.

Mr Hepworth: Sure. The answer is no. Under the pre-lodgement compliance review process we actively engage with the ATO and indeed we have a very active and longstanding relationship with the ATO, so we engage across a wide range of issues and address them as they come along.

CHAIR: Thank you. Mr Wyatt?

Mr Wyatt: We are a relatively new company, so we are in discussion with the ATO at the moment around establishing advance pricing arrangements in terms transparent pricing with our related parties. Obviously, we are also looking for our risk rating, which we would expect to be low-risk/high-consequence as an outcome.

CHAIR: Thank you. Mr Holmes?

Mr Holmes: The answer is no.

Senator DASTYARI: You are low-risk/high-consequence, I assume?

Mr Holmes: Yes.

Senator DASTYARI: A couple of things—I am going to try and get through very quickly in a few minutes, so if you can bear with me. Mr Holmes, one of the matters that we have been trying to get to the bottom of as a committee over a long period of time has been working out where this $11.67 billion figure of an interparty transfer for a resource company between Australia and Singapore has been. This is coming from a publicly disclosed document, public representation. This is a document that was FOI from the tax office—the names of the companies were redacted.
In your submission you say that your crude purchases have ranged between $9 billion and $13 billion per annum in gross terms over the last five years. You are saying that every year there is a figure between $9 billion and $13 billion which is an interparty transfer, which means you are effectively purchasing the crude oil that you then onsell—is that correct?

Mr Holmes: Correct.

Senator DASTYARI: Would that be the $11.671 billion figure?

Mr Holmes: Which year is that in relation to?


Mr Holmes: I can tell you our figures for 2014, if that is what you are interested in.

Senator DASTYARI: Okay. Can you tell me the 2014 figures?

Mr Holmes: For purchases of crude and products for 2014, our figure is $13.1 billion.

Senator DASTYARI: And you do know what your figure for 2013-14 is? Can you take that on notice? Would it be somewhere in that vicinity?

Mr Holmes: In fact it will be higher than $13 billion for 2013, just because of the way the crude price has moved. The average price in 2013 was higher, so our number for 2013 will be higher than $13 billion.

Senator DASTYARI: Can you take that on notice? This is not your document, so you cannot speak to a document that is not yours.

Mr Holmes: I can confirm that we are above $13 billion, so we are out of the range you quoted.

Senator DASTYARI: No, your income tax paid.

Mr Hepworth: We have only had four months of trading.

Mr Hepworth: 2014 was our lowest year. The highest year was 2010, with $565 million. Basically it is around the $400 million to $500 million mark over the last five years. 2014 was the lowest year.
Senator DASTYARI: Can I ask you both one question on Singapore? Mr Holmes, in relation to your Singapore operation, the point you seem to be trying to stress was that regardless of how others choose to use Singapore as a marketing hub, in your business and what you do there is a legitimate business entity in Singapore, which actually serves a function. You are making the point that you have 700 staff there—is that correct?

Mr Holmes: Correct.

Senator DASTYARI: In the way the company is structured, though, Singapore is not your parent, is it?

Mr Holmes: No.

Senator DASTYARI: Where is your parent?

Mr Holmes: UK is the parent.

Senator DASTYARI: So it goes straight to the UK?

Mr Holmes: It does. There is some ownership through the US, for historical reasons, but the main owner is the UK.

Senator DASTYARI: What is your effective tax rate in Singapore?

Mr Holmes: It varies depending on the nature of the business. I do not have the detail, but I know that the tax rates are 17 or 5 per cent, depending on the nature of the business.

Senator DASTYARI: It is a big difference between 17 per cent and 5 per cent.

Mr Holmes: Yes. The five per cent relates to the trading business, which is the point that you heard me making strongly—that the business we run in Singapore is a trading business. It is a stand-alone business in its own right.

Senator DASTYARI: Mr Holmes, I think the point you seem to be making is that this is not a marketing operation; it is a trading operation.

Mr Holmes: Yes. A lot of buying and selling goes on there—huge volumes with very thin margins. Those are the points I made in my submission.

Senator DASTYARI: And you report to the UK and they report to the UK?

Mr Holmes: Correct.

Senator DASTYARI: Mr Hepworth, could you explain to me how your Singapore operation works?

Mr Hepworth: Absolutely. Just by way of context, the Australian refining industry only produces about 40 per cent of the company's needs. Therefore, the country is very heavily dependent on imported product. Singapore, of course, is the regional hub for refined product trading. That is where all the refiners, the traders and the shipowners are, and that is where the skills and capabilities are. So in order to ensure a competitive and reliable supply of fuel we have established a trading operation in Singapore to source that fuel for the Australian market.

Senator DASTYARI: You are not responsible for it, so you may not have these figures, but how big is your Singapore operation?

Mr Hepworth: We have 34 people in Singapore currently.

Senator DASTYARI: What is your effective tax rate?

Mr Hepworth: Our operations only commenced in 2014, so it is a bit premature to comment, but similar comments to my colleague's apply.

Senator DASTYARI: Are you saying you only went to Singapore in 2014? Before 2014 you were not in Singapore?

Mr Hepworth: Correct. We commenced trading in Singapore in 2014.

Senator DASTYARI: Mr Holmes, how long have BP been in Singapore?

Mr Holmes: Since 1966.

Senator DASTYARI: And Caltex chose to go last year or the year before?

Mr Hepworth: Absolutely. As the market in Australia becomes shorter and shorter, and the dependence on imports becomes greater, the importance of having a competitive supply base increases.

Senator EDWARDS: This might help you. Chevron left your share registry earlier this year. Did they cover a lot of that work in that previous incarnation, so that you then had to go to Singapore to cover that shortfall in operations?
Mr Hepworth: To be clear, Chevron were a shareholder, but as we established a requirement to import fuel, we did leverage our relationship with Chevron and their trading operations in Singapore. That was, of course, until we had established our own capability there, as we did in 2014.

Senator DASTYARI: In terms of your structure, where do you report to?

Mr Hepworth: I report to the CEO of Caltex, who reports to the board of Caltex Australia.

Senator DASTYARI: And where does Caltex Australia report?

Mr Hepworth: It is an Australian publicly listed company.

Senator EDWARDS: And all your tax is paid here?

Mr Hepworth: All our tax is paid here.

Senator DASTYARI: You pay some tax in Singapore.

Mr Hepworth: As I said, the operations only commenced in 2014, so our tax paid in Singapore last year was $1.2 million.

Senator EDWARDS: To follow that up, we heard from previous witnesses that they have a trading operation there, as distinct from a marketing hub, which I think BHP has. When we look at that, it has to be profitable—like any centre, it has to generate profits. But that is not really where the profits of the company are derived, is it? That is to facilitate your business in Australia. Is it fair to look at your model like that?

Mr Hepworth: I am not sure that my shareholders would be happy if I agreed with that totally. It is a trading operation whose sole purpose is to source fuel on a competitive basis to supply to the Australian market. It has an opportunity to make money and it has an opportunity to lose money along the way.

Senator EDWARDS: I am interested in the flyer that you have given me. You are actually a tax collector for the ATO, aren't you.

Mr Hepworth: A big one.

Senator EDWARDS: As are all of you. Thank you for your work in this space. You repatriate to the Australian government and to the people of Australia $90 million a week in the form of excise, I see here. Is that a figure which is comparable to you other people on the panel?

Mr Holmes: Yes, exactly.

Mr Wyatt: Yes.

Senator EDWARDS: Between the three of you sitting here, then, you collect excise of upwards of $300 million a week? It depends on your market share, I know, but let us say it is a quarter of a billion dollars a week. Who is funding that? When do you have to repatriate that? You collect it at the petrol pump and presumably you have the cash for two months? What happens? Everyone is shaking their head in violent opposition.

Mr Hepworth: We collect the tax weekly and under the Excise Act 1901 we are obliged to pay the tax every Monday. As many of our commercial customers are on extended credit terms, we do not collect the cash from them for some time—so we are effectively funding that repatriation of the excise.

Senator BACK: If the client does not eventually pay, how do you then recover those lost payments from the tax office?

Mr Hepworth: We are responsible for the excise.

Senator BACK: The reality, then, is that you don't recover them?

Mr Hepworth: Correct.

Senator BACK: I thought my colleagues needed to be aware of that.

Senator EDWARDS: What is the time, typically, before you recover that money from your customer after repatriating it to the Treasury?

Mr Hepworth: It depends. Different terms are offered to different customers, but on average you can say we have them on somewhere between three and four weeks credit terms—and we pay the government weekly. So we are carrying that additional debt for a period of weeks.

Senator EDWARDS: That is the same for all of you?

Mr Condon: Yes.

Mr Wyatt: Yes.

Senator EDWARDS: Are your businesses prejudiced by any other operator operating under tax arrangements in their jurisdiction that are different from the tax arrangements that exist here in Australia? Perhaps we can start with Caltex.
Mr Hepworth: I do not believe so. The reason we are in Singapore is, as I said before, to ensure a competitive and reliable supply of fuel so that we can supply our customers here in Australia. It is important that we have the same opportunities to participate in that market as every refiner, trader and shipowner. My colleague competitors here are all represented in Singapore, so we all have the same opportunity to play in that market.

Mr Wyatt: As I mentioned in my opening remarks, the area of our business that is the most internationally exposed is the refining business. We compete with refineries in the Asian region which are five to 10 times the size of ours—often operating in jurisdictions which have significantly lower costs of operation and different tax rates from those we face here in Australia. That is our major area of exposure internationally. It is very transparent market. Every barrel that is imported into this country competes with locally manufactured products. When I talk about our costs being twice what they are for our competitors overseas, that is the reason.

Senator EDWARDS: The Senate has had another inquiry running, the fuel security inquiry, which largely suggested there was no refining capacity left in Australia. It was looking at the issue of how many days we have if the boats stopped coming. Your suggestion would indicate that refining in this country is an endangered species?

Mr Wyatt: I think that is evident from the fact that four of them have closed and that there are only four left.

Mr Holmes: As the others have commented, we are fine with the arrangements and do not feel that there are either advantages or disadvantages for various players arising out of the tax arrangements. I make the additional point, though, that the thing we always worry about is compliance—full compliance by all players in the market. These kinds of full, rigorous, transparent inquiries into these arrangements is very important. In all the countries I work in, it is one of the things I look for—to see if it is happening. I get concerned if it is not. It is one of the proper checks and balances that should be around to make sure there is full compliance by all competitors in the market. Thank you.

Senator EDWARDS: The competition is doing a lot of work in relation to discussions at the G20. I could be indulgent and say that we are at the forefront of trying to reduce our liability in terms of legislation—legislative openness—that enables people to avoid paying their taxes where their profits are earned. The issue for me is: is there a company which operates in another jurisdiction—and we have talked about your exposure to refined oil or what happens in the refining process? Is there some issue with BEPS that puts you at a disadvantage in the commercial space over another?

Mr Condon: I might take that; I think it is a really good question. What is important to note for our sector is that we have enormous infrastructure, so it is very clear where we have a taxable presence. Whilst we recognise that it is important for the international tax frameworks to be modernised, there is enormous complexity around how domestic tax regimes interact with each other. We recognise that the OECD is doing a lot of good work in terms of modernising the PE definition and the transfer pricing provisions but, for our sector, because we have got very clear infrastructure, our taxable presence in the countries where we operate for the whole industry, I would say, is clear.

Senator EDWARDS: Chair, I do not have much more unless something comes up in the discussion.

Senator McALLISTER: That is probably a good point to follow up. I want to ask each of you about your view on the country-by-country reporting arrangements that the ATO is currently consulting on. Firstly, are you participating in that consultation process; and, secondly, what is your view on the implementation of country-by-country reporting for your business and particularly whether you support it?

Mr Hepworth: We are not participating but certainly our views on tax transparency are such that, if that is introduced, then we would support that.

Senator McALLISTER: And you support the introduction of these measures?

Mr Hepworth: Yes.

Mr Wyatt: I am not familiar with it, so I do not have any comments to add.

Mr Holmes: We are taking part and we are supportive.

Senator McALLISTER: You are supportive of the country-by-country reporting arrangements?

Mr Holmes: Yes.

Senator McALLISTER: That is all.

Senator DI NATALE: I want to start with the manner in which the contracts and negotiations with your related companies enter into to get a sense of whether—for example, in the case of BP, your parent company in the UK or related company in Singapore, and obviously here in Australia—you are presented with effectively an
agreement that says, 'This is how we want you to conduct your business in Australia.' Is this a negotiation that occurs between the various related companies?

Mr Holmes: This is a critical part of the business I run, and it will not be a surprise to you to know that the buying of crude oil is the biggest cost that a business like ours faces. This is critical, as far as business leaders getting it right. I am extremely interested in it. It is all market related. The thing that I am most focused on daily is: are we paying market price for the best-value crude we can find anywhere in this region of the world, to be frank? I have got another leader in BP based in Singapore who runs the trading business there, and it is a big deal for him too and our teams. We focus on it but we are not told what to do from London. The critical decision point is: what is the market price and are we getting it?

Senator Di Natale: Perhaps delving into that a little further: in terms of the executive remuneration, for example, for your business here in Australia, how much is that tied to the profits generated here in Australia—say, before tax or after tax?

Mr Holmes: The majority of my remuneration is all about the pre-tax money. It is about safety first, but then in terms of profitability it is pre-tax profit and cash in Australia.

Senator Di Natale: Is that consistent? It is pre-tax profit here in Australia—

Mr Holmes: That is the way it works around the world.

Senator Di Natale: And that would be the same for you, Mr Hepworth?

Mr Hepworth: We are an Australian publicly listed company, so—

Senator Di Natale: But you have a related company in Singapore.

Mr Hepworth: Yes, which is wholly owned by Caltex Australia. So there are no international—

Senator Edwards: These are the only multinationals here today.

Senator Di Natale: Can I also ask you about the annual compliance arrangements. I understand BP has an annual compliance arrangement with the ATO. Is that correct?

Mr Condon: We do, for all of our indirect taxes—so excise, GST.

Senator Di Natale: Why isn't income tax part of that arrangement?

Mr Condon: That is a really good question. We have talked with the ATO a lot about how we can work better together. We do work with the ATO under a PCR arrangement. We have worked collaboratively to try to design that over the last five years. It is working very well.

Senator Di Natale: Five years?

Mr Condon: Yes.

Senator Di Natale: You have been working on whether you can include income tax as part of—

Mr Condon: No, to improve the process. There has not been any pressure on either side to bring the income taxes into the ACA, and the reason for that is that there is recognition that income tax is more complex. The GST and the excise are highly systematic taxes, relying on systems and processes that we can share and communicate more readily. The disclosure on income tax requires more judgement because of the level of interest and the threshold materiality, actually. So we have come to an arrangement with the ATO on income tax where we disclose all of our material transactions in advance of filing the return. We also talk to them soon after filing the return. We disclose all of our compliance information notes. So there is an engagement there that is really positive to get the resources to the right issues, without having to fit that within an ACA type arrangement.

Senator Di Natale: I do not want to single BP out, because at least you are halfway there, but Woodside have an arrangement which includes income tax. So they have obviously been able to surmount some of those obstacles you have just described.

Mr Condon: I cannot talk about any other taxpayer, but I can say that we have a very good working relationship with the ATO and we are talking to them about any areas of sensitivity.

Senator Edwards: Do you want me to put in a good word for you this afternoon when Mr Jordan is here?

Senator Di Natale: What about Caltex?

Mr Hepworth: We do not have an ACA, but that was actually the subject of a discussion between us and the ATO and neither party felt it was necessary. We participate and engage with the ATO under a PCR. In my vernacular, it is like a continuous disclosure regime for tax. It works very well. We engage on a regular basis—
physical meetings, face-to-face meetings. I personally meet with the ATO once or twice a year, along with the tax team. So the PCR process works very well.

Senator DI NATALE: Mr Holmes, you talked about supporting the voluntary code on transparency that is being developed. Can you talk about that briefly?

Mr Holmes: We support increased transparency on taxation around the world. In fact, we are a member of the Extractive Industries Transparency Initiative. As I said earlier, transparency is not just about transparency for the communities that we operate in but also transparency for the players in the market to know that there is a level playing field and that all possible participants are able to rely on the policy frameworks around tax and investment now and going forward.

Senator DI NATALE: This is a live discussion in the Australian parliament. In fact, in the Senate very recently we were talking about mandated transparency provisions. Do you have a view on that?

Mr Holmes: Yes. We are supportive of increasing those. As I said, though, equality and a level playing field, with clear definitions of what is shared so that everybody is reporting on the same basis, is quite important. As my colleagues have said, this is an extremely complex area, so before changes are made it will be quite important that those definitions are clear and that when transparency is increased it is clear that everybody is being looked at in the same way.

Senator DI NATALE: So you think the principle of legislating for specific transparency requirements, providing that the definitions are tight so that you feel there is a level playing field, is a good basis from which to operate?

Mr Holmes: Provided that the legislation is as simple as possible, because that is always the danger. I know there is a conversation running on many different things, so we are looking for the opportunity to keep things as simple as possible. But with those criteria, yes. I will just check if my colleague wants to chip in as well.

Senator DI NATALE: To make sure you are not in trouble.

Mr Condon: BP is very supportive of transparency. I guess our concern—and I know a number of other companies have expressed this as well—is that we need to get the right information out into the community. The idea is to build community confidence in our tax system overall. What we do not want to do is put a whole lot of information out there that is just going to be confusing. Corporate tax is highly complex and I think that is the challenge that we all have to face. I think in any legislative move around this we need to bear in mind the importance of having flexibility.

Senator DI NATALE: So what is the right information?

Mr Condon: I think the right information is to allow companies to decide how to explain their numbers and their profile, because many companies will be in different stages of the investment cycle. If you are in a heavily investing stage of the cycle, you will not be paying much if any tax but you are spending billions of dollars, potentially. If you are a mature business, you are going to have production cash flows, revenues and profits and you will be paying tax. I think that is very difficult to explain to the average person and we need to be very careful about mandating disclosures which are going to add confusion, as opposed to helping companies voluntarily disclose and explain their profiles.

Senator DI NATALE: I think most people understand that it costs a lot of money to develop a project and there is not an expectation that people should be paying huge amounts of tax on a project that is yet to reap a dividend. But equally I think people have concerns about some of the activities that this committee has taken evidence about. What I am hearing from you is that, with the right parameters, mandated transparency provisions are a good thing for your industry.

Mr Holmes: Yes.

Senator DI NATALE: Mr Hepworth, do you have anything to add to that?

Mr Hepworth: Not really. The principle of transparency is supported. I agree with the comments regarding making sure there is a level playing field. But as an Australian listed company we are open and transparent with all of our stakeholders. Tax is no different.

Senator DI NATALE: You have no objection to the parliament mandating specific provisions around transparency?

Mr Hepworth: That is an issue for the law-makers. We will comply.
CHAIR: Mr Holmes, in terms of your transactions with the Singapore operation, would you be able to give us the figures for the past five years? You have said that it ranges between $9 billion and $13 billion. Are you able to give us the figures for each of the last five years?

Mr Holmes: I do not have those figures in front of me, but we will take it on notice and come back to you.

CHAIR: So you will take that on notice?

Mr Holmes: Yes.

Senator BACK: I think it is very useful for this committee, with the panellists in front of us, to have an understanding of the nature of the industry and the very, very thin margins. If I can just summarise some of the figures, I think Mr Homes said BP over the last five years has had $102 billion of revenue and $101 billion of expenditure. There was $32 billion tax paid. In the case of Caltex's figures, there was revenue of $24.2 billion in 2014 and a profit after tax of $33 million. I remind colleagues that when they go to the fuel station people whinge like hell about paying $1.20 a litre for fuel but very happily pay $2.50 for a bottle of water, which was probably sourced from a tap around the corner. That is some of my pass to Senator Di Natale. What limitations are there on your access to crude or refined product out of Singapore? Must you buy through your associate trading companies? Perhaps you can answer first, Mr Holmes.

Mr Holmes: We buy all of our crude and other products through our trading company in Singapore. Having said that, however, some are sourced locally from the Kwinana refinery in Perth. Some of the crude is sourced locally as well.

Senator BACK: What capacity or flexibility, if any, do you have to keep your Singapore trading partner up to the mark in the sense of getting the best price for the product on the day?

Mr Holmes: As I said earlier, it is the biggest cost for our business, so it is a huge focus for me and my team to ensure we look at all opportunities to get the best value we can out of buying the crude and the products for our business here. We are in daily, weekly and monthly contact with our colleagues in Singapore to make sure we are satisfied that they are doing their job as well as they possibly can on our behalf.

Senator BACK: With international transparency, you are aware of other prices in the market?

Mr Holmes: It is a highly transparent market. In my view, the Singapore market—and I am familiar with the ones in Europe and North America—is at least as transparent as those, if not more so. It is not hard to see if there are issues. I get emails in the morning every day telling me what is going on. Be assured that, if I am not happy, I am after it immediately.

Senator BACK: Mr Wyatt, can you answer the same question, please?

Mr Wyatt: Some 15 to 20 per cent of our crude is purchased locally, from local fields. You might be interested to know that a fair amount of that comes into Geelong every day by truck from local gas fields around the state. Without a refinery there, a lot of that condensate would struggle to find a home. So we provide a real integrated play with some of the local producers. Obviously the rest of it is imported. We buy 30 per cent of our fuels locally, most of it from the two companies that are sitting on either side of me—the other two refiners. The other 70 per cent is imported. All of our imports are managed by one of our investors—Vitol—which, as I mentioned earlier, is a large trading organisation that has a large office in Singapore. It is only one of our investors. All of my other investors seek assurances from me that those arrangements are on an arms-length basis and competitive in the local marketplace. From my perspective, running a stand-alone company in Australia—we are not a subsidiary of a major international—it is important that I get the lowest possible prices for both my crude and my fuel so I can be competitive in the local marketplace and I can build a more sustainable refining future at Geelong.

Senator BACK: Mr Hepworth?

Mr Hepworth: I will just give you some numbers. We sell about 17 billion litres, of which we make about 5½ billion litres through our own refinery in Brisbane. We buy about 1½ billion litres from my friends here, and the remaining 10 or 11 billion litres we import through our Singapore trading operation. I agree with the comments that the transparency of market prices in Singapore is very high. The ACCC of course issue their annual price monitoring report—the last one in December last year, which concluded that prices in Australia have a very close relationship with benchmark prices in Singapore.

Senator BACK: There are other potential suppliers out of Indonesia. Is there any capacity for any or each of you to trade in the Indonesian crude or refined product market?

Mr Holmes: Yes, and some of our crudes do come from that region. They come from the Asian region and the Middle East—and occasionally West Africa. But it tends to be mostly Asian crudes.
Senator BACK: Mr Wyatt, you made the comment that the cost of refining in Australia is double that of some of your competitors. The Australian dollar is to your advantage at the moment, but at what point will you find that your attempts at increased productivity and performance get you to the stage where it is not in fact cost-effective for you to refine in Geelong?

Mr Wyatt: We are working on an improvement program at the moment to ensure that we do not face that outcome. We do see a lot of unique advantages of our refining business in Australia that help us build sustainability. To give you an example: the fact that we process local crudes is an advantage to us, because they do come at a cost advantage to imported crudes and, obviously, it provides benefits back to the producers as well. We can take advantage of that, because of our location in Victoria. We produce a range of specialty products such as avgas for piston engine aircraft, bitumen and solvents, which are products where we do not go head to head with some of those refineries in the Asian region, which I mentioned before, and provides some protection.

We are located in one of the fastest-growing markets in Australia and so that provides good long-term demand for Geelong to continue to sell into. There is a range of benefits that we see in terms of our refinery business there, but there are significant challenges that we need to overcome—increasing production, improving the reliability, because it is an old refinery and continuing to invest in that. So a lot of that $200 million, I mentioned before, is going into improving reliability and capacity and, ultimately, improving the productivity of the site so that we get more out of what we have got as key priorities. That is our program for the next two or three years.

Senator BACK: Senator Edwards mentioned another committee of the Senate that is looking at security of fuel supply, so we would strongly support continuation. However, it is the case, is it not, that there are refineries in Indonesia and Singapore that are capable of producing all of Australia's production equivalent?

Mr Holmes: Yes: it is a highly liquid market in the region, and in India there is a refinery that is 10 times the size of our refinery in Western Australia. The Koreans and the Japanese tend to want to serve the east coast of Australia; however, similar to—

Senator BACK: Its reliance on its refinery in Gujarat state.

Mr Holmes: That reliance will now be 1.2 or 1.3, exactly. However, we are investing for the long run in our refinery in Western Australia. We want to improve its performance—no question—but it has some advantages already in terms of local crudes and the way its flow scheme works in terms of how it is set up to make gasoline and the way it is able to take advantage of condensates as well. It is a tough market out there but, provided Kwinana keeps improving from a safety, reliability and a financial performance, we see a long-run future for it.

Senator BACK: Thank you and thank you for your evidence.

Senator EDWARDS: Just to wrap up the final minutes that we have, Mr Holmes, I might take you to that space in a Senate hearing where you have any other related matters. You guys can relax: I think I am going to take you out here. With regard to BP and the Great Australian Bight exploration program, I have seen reported this morning that NOPSEMA, the National Offshore Petroleum and Environmental Management Agency, have referred your submission back to you. From what I gather, that is not an unusual occurrence—is that right.

Mr Holmes: That is correct and thank you, Senator, for being able to cover this. That is what we were actually expecting. NOPSEMA is a thorough, rigorous regulator and we are happy to work with them to make sure they challenge us and ensure that our environmental plan is right and good for what is a very, very important piece of work for Australia but also for us.

Senator EDWARDS: But isn't there a danger that political opportunists, such as we have seen from perhaps one of the participants in South Australia, are claiming this is a big red flag—that we should be watching this, introducing new legislation and perhaps doing all those other things. Is this just business as usual?

Mr Holmes: Yes. As I have said, this is a significant investment for BP in terms of—

Senator EDWARDS: How much?

Mr Holmes: It is several billion dollars.

Senator EDWARDS: Several billion dollars, and you have not even put to sea yet.

Mr Holmes: Exactly, and you heard earlier today about the nature of some of the projects that happen in our industry, how much investment has to go in upfront over such long periods. So reliability of policy, whether it is taxation, approvals or whatever, is critical for the decision making around these big projects. So having regulators that are rigorous, very, very thorough and independent for the long run is, we think, one of the critical things for these decisions.

Senator EDWARDS: How many highly-paid skilled jobs do you think you will generate when this program is fully underway?
Mr Holmes: If we are successful and we find oil and others find oil in that region, then it would be hard for me to estimate—it would be a huge number. But, certainly, as far as this program that we are currently undertaking, if I remember correctly, in our own direct area, it is around 300 jobs. However, over a program, it would be significantly higher than that.

Senator EDWARDS: It could even get into the tens of thousands.

Mr Holmes: Yes.

Senator EDWARDS: Thank you and thank you for all your participation in the Australian commercial arena.

CHAIR: Thank you very much, gentlemen, for your evidence this morning. The committee will now suspend for 15 minutes.

Proceedings suspended from 11:00 to 11:14
BROWN, Mr Stuart, Tax Manager ExxonMobil Australia Group of Companies
KRZYWOSINSKI, Mr Roy, Managing Director, Chevron Australia
MACFARLANE, Mr CN (Sandy), Vice President and General Tax Counsel, Chevron Corporation
MCLEAN, Mr Alan, Executive Vice President Taxation, Shell Australia
OWEN, Mr Richard, Chairman, ExxonMobil Australia Group of Companies
SMITH, Mr Andrew, Country Chair, Shell Australia

[11:14]

CHAIR: I now welcome representatives from Chevron, ExxonMobil and Shell. Before I ask you to go any further, I understand Senator Back has a comment.

Senator BACK: I declare an interest as a past state wide distributor and multiple site franchisee of the Shell company. I would like this reported.

Senator EDWARDS: Do you have a current interest?

Senator BACK: I have absolutely no current interest other than lining up at the bowser on a regular basis.

CHAIR: Thank you very much for appearing before the committee today. I invite you to make a brief opening statement should you wish to do so.

Mr Smith: Thank you very much. My name is Andrew Smith. I am the Country Chair of Shell Australia, accountable for the company's interests in Australia. With me today is Alan McLean, the global head of tax for Shell. We are pleased to be here to discuss this important topic.

The company I represent is an investor in many parts of the world. It has had a presence in Australia since 1901. Shell has a proud record of investing in Australian projects and has been able to support the local economy by bringing capital and know-how into our nation while developing local expertise and growing the Australian economy. Australia remains a major focus of investment for Shell with $20 billion invested over the past five years and a further $20 billion planned over the next decade. It is worth pointing out that sectors like ours continued to make investments during the global financial crisis, a period of significant uncertainty, investments that helped Australia maintain growth while other major economies contracted.

The company's current asset base in Australia includes a 13 per cent equity stake in Woodside Petroleum Limited and the following projects, of which only the North West Shelf is so far producing. We have a 67½ per cent stake in our operated Prelude Floating LNG project, a 14 per cent share of the North West Shelf LNG, a 25 per cent share of the Gorgon LNG Project, a 27 per cent equity interest in the Browse Floating LNG venture and a 50 per cent interest in Queensland's Arrow Energy. The investments the company has made have created thousands of jobs, predominantly in regional Australia; have created value for local businesses; have brought flow-on benefits to local communities and will further contribute to Australia's economic prosperity.

We will contribute significantly to Australia's tax base in the years ahead when these projects come online and the benefits of these massive investments are realised. Australia's resource sector is reliant on overseas funding and expertise in order to construct the nation building projects of tomorrow. The global corporations that invest in our resource sector are essential partners in future Australian prosperity. Intragroup transfers are vital to ensuring that operating companies receive the capital and expertise they need to flourish. In the case of my own business, I can state with certainty that the Prelude Floating LNG project would not have been possible without this form of global contribution.

It is the case that Shell's record capital investment in Australia over the last few years has impacted our tax liabilities. But it needs to be understood that LNG projects require enormous capital injections during the construction phase and can take decades to become cash positive. With such long investment periods, fiscal stability is paramount to investing in any jurisdiction around the globe. Despite still being in an assessment phase for most of the company's portfolio, Shell Australia has paid over $3.6 billion in taxes and royalties in the last five years. In terms of taxation, Shell's global operations generate revenue through taxes and royalties through governments around the world. In 2014, Shell paid over US$14.3 billion in corporate taxes and US$3.9 billion in royalties to government. Our global effective tax rate over the past three years was around 50 per cent. I would like to add that Shell is fully committed globally in Australia to managing its tax obligations and revenue authority relationships with a cooperative compliance approach. This not only ensures stability and certainty for business and the government but also reduces inefficiencies for all parties and minimises disputes.
There has been some attention in previous hearings on the use of trading entities based in regional hub locations like Singapore. Shell has had a presence in Singapore since the 1890s where it operates one of the world's largest oil refineries and today Shell continues to buy and sell through a global trading business in this important regional centre. Shell's business in Singapore trades oil, oil products and gas from around the globe. The scale of this trading business, and the certainty it provides large commercial customers in the region, was an essential factor in Shell taking positive investment decisions on large Australian resource projects.

Mr Chairman, you will have noted that we have, in our submission, made a significant effort to provide the information requested. It is one of Shell's business principles to comply with the laws of the countries in which we operate and to conduct business in a transparent manner. Shell recognises the importance of the multinational tax debate and has been actively engaged in global discussions on the issue. We welcome the opportunity to work with the Australian government to address concerns. At the same time, we reiterate the importance of maintaining fiscal stability and certainty for long-term investments in order to protect Australia's competitiveness.

CHAIR: Do you have an opening statement, Mr Krzywosinski?

Mr Krzywosinski: Chevron is one of the world's leading integrated energy companies and has been investing in Australia for more than 60 years. Chevron is leading the development of the Gorgon and Wheatstone natural gas projects which represent a combined initial investment of US$84 billion. Chevron's share is the largest single investment by a company in Australia's history. Chevron Australia is also a one-sixth participant in the North West Shelf project, Australia's first and largest operating natural gas project.

The development of the Gorgon and Wheatstone projects, together with Chevron Australia's other activities, are creating enduring economic benefits on a scale never before seen in Australia—jobs, revenues and local content. To date, more than $45 billion has been committed to Australian goods and services providers and nearly 1,000 contracts have been awarded to Australian based companies—this is to develop the Gorgon and Wheatstone projects. Furthermore, Chevron Australia's activities have directly employed nearly 19,000 workers. These two nation-building projects will provide energy security for decades to come and will spearhead Australia's growing importance as a global natural gas supplier. Chevron Australia recently commissioned independent economic analysis from ACIL Allen Consulting. The analysis shows that, over the period from 2009 to 2040, the projects will deliver more than $1 trillion to Australia's gross domestic product, will create nearly 150,000 full-time-equivalent jobs in Australia and will contribute more than $338 billion in federal government revenue.

Chevron is a significant taxpayer globally. Our worldwide effective tax rate was 38 per cent in 2014 and has averaged 41 per cent in the last five years. Chevron is also a significant taxpayer in Australia. Over the past five years, we have paid over $3 billion in federal and state taxes and royalties, primarily attributed to our interest in the North West Shelf project. In recent years, North West Shelf revenues have largely been offset by costs associated with the construction of the Gorgon and Wheatstone projects, as well as significant exploration and research and development expenditures. Our current income tax profile reflects where we are currently at in our investment life cycle. To date, Chevron Australia has not earned a single dollar of revenue from our current Gorgon and Wheatstone projects or investments, both of which are currently under construction. To be clear: Gorgon and Wheatstone are bricks-and-mortar-type tangible assets. Once these projects have been completed and are in full production, they will significantly increase Chevron Australia's contribution to government revenue over their operating lives. Importantly, Chevron Australia's revenues are immobile and are subject to tax here in Australia. In approaching our tax obligations, we comply with the letter, the spirit and the intent of the law—in line with our stringent global code of business ethics. Our philosophy is to be open and transparent in our engagement with the ATO. Where possible, we seek early engagement on significant, complex or uncertain matters across all facets of tax law.

With regard to the recent legal proceedings between the ATO and Chevron Australia in the Federal Court, this is a case where Chevron and ATO simply disagree on how the law applies. It is important to note that Chevron Australia did not engage in any illegal activity or tax avoidance. I might summarise the judgement, and I am going to quote Justice Robertson:

The case does not involve the general anti-avoidance provisions in part IVA of the Income Tax Assessment Act 1936. Nor does the case involve any allegation that the Credit Facility Agreement was a sham.

The court dismissed Chevron Australia's appeal on the grounds that we did not provide sufficient evidence to prove that the inter-company interest rate was at arm's length. Chevron does not agree, and we will be appealing this decision. Our current funding structure was put in place to fund our significant investment here in Australia. The size of our borrowing is a reflection of the size of our investment.

In closing, Chevron Australia is proud to be bringing the Gorgon and Wheatstone projects to life. These are nation-building resource projects and they have made a significant economic contribution during the construction
phase, and will continue to make a significant contribution to the Australian economy over their 30-plus-year operating lives. I thank you for that. If I may—with the chair's permission—I would like to table the ACIL Allen report for the committee's consideration, which further communicates and provides additional detail.

CHAIR: I have no objection to that.

Senator DASTYARI: That was supplied to us via email. Is that the same report that was given to us by email about two days ago?

Mr Krzywosinski: Yes. I would just like to officially table it. Thank you for that.

CHAIR: Mr Owen?

Mr Owen: Good morning. I am chairman of ExxonMobil Australia Group of Companies, and I have overall responsibility for our oil and gas exploration, development and production operations here in Australia, as well as our petroleum refining and supply operations. Appearing with me is our tax manager, Stuart Brown.

The ExxonMobil Australia Group of Companies has operated in Australia since 1895, and operations and investments in the country have grown in that time. Today, with a total investment of over $20 billion, we are a substantial investor in the Australian economy and we are a major contributor to the nation's wealth. As operator of the Gippsland Basin Joint Venture—50 per cent owned by BHP Billiton—we are continuing to invest to keep natural gas flowing to nearly 40 per cent of the eastern Australian domestic gas market. The Kipper Tuna Turrum Project, at a cost of more than $5 billion, is the largest domestic gas development on the eastern seaboard. Similarly, we hold a 25 per cent interest in the Gorgon Project, a $55 billion project that will lead to significant revenues for the Australian economy. We also continue to invest in our refining and supply operations, and we are the proud owner of the Altona Refinery in Melbourne, with supplies more than half of Victoria's automotive and jet fuel needs. While many refineries around Australia are closing down, we have invested $300 million in Altona over the past five years and are now considering ways to expand its capacity.

These investments have not only direct benefits in the form of fuel for the nation, but also substantial tax revenues. Over the past 11 years the ExxonMobil Australia Group has paid more than $7 billion in corporate income tax and petroleum resource rent tax to the federal government, resulting in an equivalent tax rate of 54c on the dollar. Of this, $1.6 billion was corporate income tax, while the lion's share came from petroleum resource rent tax—PRRT—where we paid $5.4 billion in the period. These payments are in addition to the billions that are paid or collected every year on behalf of the government at all levels, including excise, goods and services tax, land tax, rate and withholding tax. In 2014 total tax payments to all forms of government in Australia exceeded $2.5 billion.

I understand, however, that you are interested not in the total tax payments or effective tax rates, but in areas where large corporations are allegedly avoiding paying their share of tax. Treasury in its statements to the inquiry indicated there are three broad categories of tax planning of which the inquiry could focus, and I will cover each of them, if you do not mind. The first—and to quote Treasury—was in excessive interest deductions where firms claim excessive debt deductions in order to reduce their Australian taxable income. Treasury continued:

Of course, claiming a deduction for interest and expenses on business loans is standard tax policy.

Treasury's concern is with contrived arrangements designed to minimise Australian tax. The ExxonMobil Australia group is currently paying a substantial interest bill on the financing charges associated with the largest LNG project in Australia and the largest domestic gas project in Eastern Australia. Financing these projects, which runs into the tens of billions of dollars, is required and ExxonMobil Australia has done so at arm's length interest rates comparable to what could be achieved in the open market. It is anticipated that, once the project starts full production, these historically high debt levels will reduce in accordance with typical business cycles. These loans are not contrived and they are within the legislated thin capitalisation limits and are competitively priced.

The second area of concern to Treasury involves shifting income from out of Australia through the use of related party payments to other low-tax countries. As set out in our submission to the inquiry, ExxonMobil Australia makes significant related party payments, and these cover three main areas: intercompany services, where the Australian tax office has recently completed a detailed review without making any adverse findings; the sale and purchase of crude oil and refined product, where prices are based on readily identifiable international arm's length prices for these products; and interest, which as I have already mentioned, is charged at market rates using arm's length principles. Indeed ExxonMobil Australia is able to use its international affiliates to provide access to global buying power for crude oil and refined products to help keep retail prices down.

The final areas of concern to Treasury involve firms avoiding taxable presence in Australia where foreign multinationals that supply goods and services to Australia and Australian customers adopt contrived arrangements.
to avoid having a taxable presence in Australia. This is clearly not relevant to ExxonMobil Australia, which has, as I noted earlier, significant investments in Australia for which it has paid and will continue to pay billions of dollars in tax.

In conclusion, ExxonMobil Australia welcomes the inquiry as an opportunity to highlight the significant investments the company has made and continues to make in Australia and the tax contribution associated with that investment.

CHAIR: Thank you, Mr Owen.

Senator DASTYARI: Thank you for that. I note that we had some fantastic and detailed opening statements so I suspect, Chair, we may end up running over—

Senator EDWARDS: It would have been even more fantastic if I had not read about them in the papers this morning. Anyway, that is fine.

Senator DASTYARI: Mr MacFarlane, I read your title but I want to understand what your role in Chevron is. You are the vice president and general tax counsel—is that an international or Australian role?

Mr Macfarlane: I am the global head of tax for Chevron.

Senator DASTYARI: And you have flown out for this inquiry?

Mr Macfarlane: I have. We take our tax obligations seriously—and that is why I am here—throughout the world.

Senator DASTYARI: Obviously, you will do other things while you are here. When did you get into Australia?

Mr Macfarlane: I came in last week.

Senator DASTYARI: Fantastic, and you are leaving?

Mr Macfarlane: Tomorrow.

Senator DASTYARI: Firstly, I want to acknowledge that is a huge sign of respect to the committee and the work the committee has done. I assume you have testified or given evidence before to US Senate inquiries and processes or internationally?

Mr Macfarlane: I have in the House of Representatives in the US Congress.

Senator DASTYARI: And have you anywhere else around the world?

Mr Macfarlane: I have not.

Senator DASTYARI: But you have given evidence in the US House of Representatives?

Mr Macfarlane: Yes.

Senator DASTYARI: And you are the head of global tax for Chevron?

Mr MacFarlane: That is correct.

Senator DASTYARI: And that would mean you would report directly to the international CEO?

Mr Macfarlane: My boss is the chief financial officer of Chevron.

Senator DASTYARI: That is a very senior position, so thank you for being here with us today. You would probably be the right person to ask some of these questions to. How many companies does Chevron internationally have in Delaware? What number are we talking about here?

Mr Macfarlane: I do not know the exact number in Delaware, but there seems to be a lot of misconceptions about what it means to be incorporated in Delaware. Delaware is one of the 50 states of the United States, and any income which is earned in Delaware is reported on the US federal income tax return, and US federal income tax is paid on any income that is earned in a Delaware corporation. So tax advantages from a federal viewpoint—

Senator DASTYARI: That was not the question. How many companies does Chevron have? I know there are 280 which have 'Chevron' in their title. There would be more than that, would there not?

Mr Macfarlane: I do not understand your question. Which companies?

Senator DASTYARI: How many companies and subsidiary companies does Chevron have registered in Delaware?

Mr Macfarlane: I do not know exactly. I think it is about 200.

Senator EDWARDS: It is 280 by the sound of it.
Senator DASTYARI: There are 280 that have 'Chevron' in their title. We suspect there may be others that are not called 'Chevron'. That is a basic kind of thing. How many are there in Bermuda?

Mr Macfarlane: In Bermuda, I think we have about the same.

Senator DASTYARI: Is it somewhere around 200?

Mr Macfarlane: Two hundred.

Senator DASTYARI: Do you know how many of those companies—

Mr Macfarlane: Active companies; there may be some inactives.

Senator DASTYARI: Do you know how many of those companies are called 'Chevron Australia' or have 'Chevron Australia' in their titles?

Mr Macfarlane: I do not.

Senator DASTYARI: Do you know, Mr Krzywosinski?

Mr Krzywosinski: No, I do not. Do you mean in their title or whether they operate in Australia? What specifically is your question?

Senator DASTYARI: I am saying I know of Chevron Australia Transport, which is a Bermuda company, and I know of Chevron Oil Company of Australia, which is a Delaware company. I assume, if they are called 'Chevron Australia', you would know about them, as the CEO of Chevron Australia. Do you know of those two companies?

Mr Krzywosinski: Yes.

Senator DASTYARI: Do you know of any other companies which have 'Chevron Australia' in their title?

Mr Krzywosinski: Not that I am aware of.

Senator DASTYARI: You are saying they are the two that operate.

Mr Krzywosinski: They are two active companies, yes, we operate here.

Senator DASTYARI: Explain to me exactly what Chevron Australia Transport Pty Ltd Bermuda does?

Mr Macfarlane: Regarding the Chevron group of companies that operate in Australia, we have a consolidated group. It is headed by Chevron Australia Holdings Pty Ltd, and it is held by a US company. There are no Bermuda companies in the chain of ownership down to Chevron Australia.

Senator DASTYARI: I thought Chevron Australia Transport owned Chevron Australia Transport Pty Ltd, so Chevron Australia Transport Bermuda owned Chevron Australia Transport Pty Ltd. Your transport company in Australia is wholly owned by the exact same company with the same name, which just happens to be in Bermuda.

Mr Macfarlane: The only Bermuda connection with the Australian operations is the shipping operations associated with the North West Shelf. The North West Shelf has jointly owned shipping operations through a company called International Gas Transportation Company Ltd, and Chevron owns a one-sixth interest in that, and it provides shipping connection with the transport of gas for the North West Shelf.

Senator DASTYARI: So you are saying that Chevron Australia Transport Pty Ltd, the Bermuda company, completely owns Chevron Australia Transport, and the role of Chevron Australia Transport is in regard to the associated shipping costs, which is what you put in your submission as the $40 million worth of costs. Is that correct?

Mr Macfarlane: The transportation is provided by the jointly owned company. The jointly owned company, we have a one-sixth interest in it—

Senator DASTYARI: But you put a figure of $40 million in your submission. Is that an overall figure of $40 million, or is that one-sixth of a larger figure?

Mr Macfarlane: That would be the Chevron figure.

Senator DASTYARI: I do not understand why Chevron Australia Transport Pty Ltd is owned by Chevron Australia Transport Bermuda?

Mr Macfarlane: The only connection with Australia is the ownership of the International Gas Transportation Company Ltd, which we own a one-sixth interest in. That company provides the transportation services for the North West Shelf. The other companies that you are referring to would not have revenue from Australia.

Senator DASTYARI: You are saying that Chevron Australia Transport Pty Ltd has no revenue from Australia. Is that your evidence today?
Mr Macfarlane: International Gas Transportation Company Ltd earns the transportation revenue. There may be distributions of dividends from there, but the direct services that are provided are provided by IGTC.

Senator DASTYARI: Mr Krzywosinski, what does Chevron Australia Transport Pty Ltd do?

Mr Krzywosinski: As Sandy mentioned, it is our interest in the North West Shelf transportation business.

Senator DASTYARI: Why is it owned by a Bermuda company?

Mr Krzywosinski: It is quite common to have transportation activities owned by Bermuda companies. Bermuda is globally recognised for the highest levels of safety standards, environmental standards and maritime standards. It is quite common that most maritime activities are owned through Bermuda companies.

Senator DASTYARI: Chevron Australia Transport Pty Ltd reports to Chevron Australia Transport Pty Ltd Bermuda—correct?

Mr Krzywosinski: Correct.

Senator DASTYARI: Have you been to Bermuda?

Mr Krzywosinski: I have not been to Bermuda and I do know why that would be relevant, but I have sailed on the ships many times.

Senator DASTYARI: I do not understand why you seem to have the company that seems to own your Australian transport operation based out of Bermuda. If it is not for tax purposes, I cannot see any other reason.

Mr Krzywosinski: May I explain one more time the reason why? Bermuda is viewed as a very common jurisdiction for maritime registry.

Senator DASTYARI: It is also a very common jurisdiction for tax avoidance and tax minimisation. This is a list of havens.

Mr Krzywosinski: I think there is a misconception.

Senator DASTYARI: Let us clear it up.

Senator EDWARDS: You are a one-sixth owner in a company, which I presume other multinationals are—

Mr Macfarlane: Absolutely—North West Shelf partners

Mr Krzywosinski: We are a one-sixth interest.

Senator EDWARDS: There is you and five others?

Senator DI NATALE: Five other partners are not in the North West Shelf project—

Senator EDWARDS: Let me get to it, Senator Di Natale.

Senator DI NATALE: I think it would be helpful, given you interrupted, to create some clarity—can we just understand who the six companies are?

Mr Krzywosinski: Woodside, Shell, BHP, BP, Chevron and MIMI.

Senator DI NATALE: They all have an equal one-sixth ownership?

Mr Krzywosinski: Yes.

Senator EDWARDS: There are services delivered by that company for all those companies around the world. It is not unusual to have shipping companies around the world based out of Bermuda—I understand that.

Mr Krzywosinski: Correct.

Senator DASTYARI: But the shipping is not based out of Bermuda. The holding company is based out of Bermuda. That is the point we have to get across here. It is not the shipping that is based out of Bermuda. The ship never goes to Bermuda. The holding company is held in Bermuda. The shipping company is called Chevron Australia Transport Pty Ltd, which is an Australian company. It just happens to be completely owned by a Bermuda company.

Mr Macfarlane: Let me repeat that the transportation is provided by International Gas Transportation Company Ltd; the company you are referring to is not the company that is providing the transportation. You referred to secrecy. All of the details of the financial arrangements of Chevron's companies located in Bermuda and throughout the world are reported to the Internal Revenue Service of the United States on an annual basis as part of our tax filings. It is completely transparent.

Senator DASTYARI: We are going to get to that when we get to the tax filings. We have plenty of time. I want to get my head around the Federal Court ruling. You have obviously followed this case a lot closer than a lot of us so your understanding of this will probably be a bit deeper. I am trying to be as fair as possible. The ATO will come later and they will give their side of the story. My understanding is the dispute between the ATO and
Chevron seems to be at a very simple level about whether or not the loan arrangement was at arm's length. Is that a fair assessment?

**Mr Macfarlane:** The question is whether the rate that was charged for the loan was an arm's length rate?

**Senator DASTYARI:** The rate that was charged was around nine per cent. Is that correct?

**Mr Macfarlane:** It was a floating rate, but in the early stages it was about nine per cent.

**Senator DASTYARI:** The figures that have been given in the press I assume are broadly correct. I know we are talking about currency conversions, that is why these things can change a bit, but the money was borrowed in Delaware at 1.2 per cent and lent to Australia at a rate of around nine per cent. That varied, but they are headline figures.

**Mr Macfarlane:** It is not an apt comparison. We are talking about two different kinds of loans. These are apples and oranges. In our case it was a company called CFC. CFC lent to Chevron Australia Group at the nine per cent rate. That was an Australian dollar loan, and it was based on the Australian market for Australian loans. It was also based on the balance sheet and the ability to repay—

The other rates that you are quoting—you are talking about loans that were raised by Chevron Corporation or guaranteed by Chevron Corporation. Those loans are made based on the balance sheet and ability to repay of Chevron Corporation. They are also US dollar loans. When we went through the case, the assessment that was set up by the ATO did not look to the US rates. The assessment looked to the Australian rates, which at that time—this was about 12 years ago now when the discrepancy was fairly high—were about five per cent. So we are talking about the difference between five per cent and nine per cent. When the court went through all this, they agreed with us, at the end of the day, that it was a dispute over whether there was an arms-length rate charged on that loan. The court held for the ATO on the basis that we had not provided sufficient evidence to show that it should be other than the assessment.

**Senator DASTYARI:** You are challenging that, which is your right.

**Mr Macfarlane:** What the court went on to say was that there was a benchmark that they could look to, which was the secured lending rate. There was, in our view, evidence as to the secured lending rate in the record of the court which was provided by both an expert witness for the government and an expert witness for Chevron. If you look at those two pieces of expert witness testimony, you are looking at a spread of something like 1½ per cent to 2 per cent—in terms of the discrepancy between the views of the parties.

**Senator DASTYARI:** I think the judgement was about a fortnight ago?

**Mr Macfarlane:** I believe it was 23 October.

**Senator DASTYARI:** You are exercising your legal right to challenge that decision—is that correct, Mr Krzywosinski?

**Mr Krzywosinski:** That is correct.

**Senator DASTYARI:** This is relating to loans between 2004 and 2008—is that correct?

**Mr Macfarlane:** It is between 2003 and 2007.

**Senator DASTYARI:** I would like to go to 2009, which I am sure you guys are prepared for. There is a $35 billion dollar credit facility between Australia and Delaware that was established in 2009 to pay for the Gorgon project. Is that correct?

**Mr Macfarlane:** It is used to fund capital expenditures. It is Gorgon and Wheatstone as well.

**Senator DASTYARI:** That is to be repaid between 2016 and 2021—is that correct, roughly?

**Mr Macfarlane:** The repayment dates are difficult to predict exactly. At this point, the interest is being added on to the principal because we do not have revenues yet. We have not yet produced a dollar of revenue from Gorgon or Wheatstone. We will repay that loan as cash flow becomes available to do so, but that requires us to get on line and it is also dependent on commodity prices—oil prices and gas prices.

**Senator DASTYARI:** What is the interest rate on that loan?

**Mr Macfarlane:** It is BBSW—which is essentially an Australian LIBOR—plus 2.63 per cent.

**Senator DASTYARI:** What is BBSW at the moment, roughly?

**Mr Macfarlane:** I do not know exactly. I think it is around 2½ per cent.

**Senator DASTYARI:** So we are talking about roughly five or six per cent. That is today; it obviously varies. Last year, how much interest was charged by the Delaware parent on that $35 billion loan?

**Mr Macfarlane:** You are talking about the interest payments that are made?
Senator DASTYARI: Yes.

Mr Macfarlane: The interest payments are received by the Delaware parent, the US incorporated parent. For US tax purposes, the activities of Chevron Australia are included in the US tax net. The income and expenses of Chevron Australia are all included in our consolidated tax filing for the United States. Chevron Australia is treated as if it were a branch, so there is an elimination of both the interest expense and the interest income under US law.

Senator DASTYARI: In 2014 there was $1.8 billion charged in interest by the Delaware parent. Is that right?

Mr Macfarlane: That is about right.

Senator DASTYARI: With the 2003–2007 figure, there was a dispute between Chevron and the Australian Taxation Office that resulted in the court process currently underway—which is the system we have.

Mr Macfarlane: That is right.

Senator DASTYARI: Explain to me where you are at with this at the moment. We have heard different words bandied around. Are you currently under audit or under legal dispute? Has it gone to court yet or are you just being audited by the tax office?

Mr Macfarlane: The ATO has opened an audit of our financing arrangements—the ones that you were referring to—from 2009 through to 2013, I believe.

Senator DASTYARI: When did they open that? When did they notify you?

Mr Krzywosinski: October 2014. That is when the audit commenced.

Mr Macfarlane: I think the other thing I should add is that under the arrangements that are in place now, which commenced in 2009, the interest payments are subject to withholding tax in Australia. So in the five-year period we paid about $530 million of Australian withholding tax in connection with these loans.

Senator DASTYARI: The audit began in October last year—correct?

Mr Krzywosinski: Yes, 2014.

Senator DASTYARI: Obviously that is a matter for the ATO and they will be able to answer that, but are you expecting that to end this year or next year?

Mr Krzywosinski: You would have to ask the ATO.

Mr Macfarlane: It is only in an information-gathering stage at this point.

Mr Krzywosinski: They have various phases, so it is very unpredictable.

Mr Macfarlane: We do not necessarily have control over when the ATO finishes things up.

Senator DASTYARI: And these things can take several years. It is a matter for them, but you have been through this before.

Mr Macfarlane: That was the case in the last controversy—the one that went to court.

Senator DASTYARI: In the last controversy, how long was the case? Do you remember roughly? Mr Krzywosinski, how long have you been CEO for?

Mr Krzywosinski: Since 2008.

Senator DASTYARI: Do you know how long that last process took?

Mr Krzywosinski: For 2003 to 2007? I do not know, but obviously it is still ongoing, so it has been a while.

Senator DASTYARI: So it is at least 13 years.

Mr Macfarlane: Yes. When we set that up, we went and talked to the ATO about the arrangements. So we have had discussions with them about those loans, starting in 2003.

Senator DASTYARI: Mr Macfarlane, you mentioned an expert who gave evidence in your tax hearing to the Federal Court. What was the name?

Mr Macfarlane: The one who gave evidence having to do with the secured lending in our case was Mr Gross, who was a retired Bank of America banker. On the government side it was a Mr Hollis.

Senator DASTYARI: Was Mr Gross the same expert witness who admitted receiving bribes in Nicaragua?

Mr Macfarlane: I am not aware of anything like that.

Senator DASTYARI: He is.

Senator EDWARDS: For the benefit of Hansard, this here is a headline for the Chevron fellows, from last week's media. It says ‘Chevron paid only $248 tax on $1.7 billion profit’. Tell me that is not so.
Mr Macfarlane: That is a completely inaccurate picture.

Senator EDWARDS: Why is it a headline in a prominent national daily financial paper?

Senator BACK: That is the standard of modern media reporting, I imagine.

Senator EDWARDS: It is in the newspaper, so it must be true!

Mr Macfarlane: I cannot speak for the reporters, but my impression is that they are getting their information from a report that was put out by a group called the ITF.

Mr Krzywosinski: It is a union based reporter group.

Senator EDWARDS: Sorry—who are they?

Mr Macfarlane: The International Transport Workers’ Federation, which is supported by the unions. It is a union movement supported federation.

Senator EDWARDS: So they cannot count.

Mr Macfarlane: What that does is completely ignore the federal tax treatment. It is only looking at what was filed in Delaware. Delaware is a bit of a red herring in this whole thing. As I said, Delaware is one of the 50 states. Everything in Delaware is subject to US tax.

Senator EDWARDS: Are you happy with a headline like that?

Mr Macfarlane: No. That is one of the reasons I am here.

Senator EDWARDS: It is probably one of the reasons why the room is packed.

Mr Macfarlane: There has been an awful lot of misinformation going around. We have heard reports of things 25 times our cost of funds.

Senator EDWARDS: What is that about?

Mr Macfarlane: It is just patently false. I went through earlier what the comparison is on the rates. I think another thing that is important to make clear here—

Senator DASTYARI: Let’s be clear on the 25 times. The 0.2 per cent figure is wrong.

Mr Macfarlane: is that our first goal is to make sure we are complying with the law of Australia and we are complying with the law of the United States and wherever else we operate. All of these arrangements are in accordance with the law. The Australian law for debt, there are really two requirements: one is the thin-capitalisation rules and the other is the arms-length pricing. With respect to thin cap, we were within the guidelines for thin cap for all the years, and continue to be. With respect to the arms-length pricing, I went through my discussion before. We have done arms-length pricing. There is a difference of view from the ATO. We had a number of experts about that. If you go to the—

CHAIR: I would like a point of clarification for the records, Senator Edwards. We have now established that $248 was not the correct amount of tax on $1.7 billion profit. Could Mr Macfarlane please tell us what amount of tax was paid.

Mr Macfarlane: I do not know, exactly, what the $248 is but there is a minimum tax or filing fee associated with being incorporated in Delaware. I suspect that is what that is about. The income that comes in—

Senator EDWARDS: That's not even tax, that is just a filing fee.

Mr Macfarlane: It is a filing fee or a minimum-tax type thing. As I said before, Cap C, which is the Delaware company, is part of the US return. It is subject to federal tax as is Chevron Australia and the loans that go between them are eliminated. But the consequence of that is you also have the situation where you have all the income of Chevron Australia—all the petroleum income from the North West Shelf, everything that comes about from Gorgon and Wheatstone in the future—is all going to be taxable in the US as well.

CHAIR: Do you have a dollar figure for us?

Mr Macfarlane: On the income?

CHAIR: On the $1.7 billion profit that Senator Edwards is referring to.

Mr Macfarlane: The $1.8 billion interest that was paid is eliminated. That is what I said earlier. It is eliminated because there is—

Senator EDWARDS: It is not a profit.

Mr Macfarlane: It is not a profit; there is no profit.

Senator DASTYARI: That $248 is wrong, because it is actually zero.
Mr Macfarlane: There is no profit associated with it.

Senator DASTYARI: We stand corrected.

Senator BACK: What do you want to do—pay tax when you have not got any gas out of the ground yet?

Senator EDWARDS: Why would trade unions be going after you guys, on this, when they want to fill up all of these projects with all of their people who are their members? How many people are you going to employ?

Mr Krzywosinski: Thank you for that question. We are currently employing 19,000 workers who are working on the Gorgon and Wheatstone project.

Senator EDWARDS: Why are they trying to vilify you in a media article like that?

Mr Krzywosinski: It is unclear to us why anybody would try to—you would think there would be a lot of support, on that front. I also want to go back to the comment that I made in my opening remarks about the $45 billion that had been spent on goods and services provided by over a thousand local contractors.

Senator EDWARDS: Just remind me how much revenue you have generated from that.

Mr Krzywosinski: We have developed zero. We have not received one dollar of revenue from either the Gorgon or the Wheatstone project. We are currently in the investment phase. I think you heard, earlier, testimony that these projects have long investment horizons. We need to recognise that Gorgon was FIDd—final investment decision project sanctioned—in 2009. Wheatstone was sanctioned in 2011. These projects have investment horizons of five or six years. We are still in the investment phase of Gorgon.

I could not help but listen to some of the questions before I came in. There were some questions about operating revenue, how much tax we pay and so on and so forth. Let me just throw out some numbers, here. The C&E, in the last five years, being capital expenditures—this is the investment that goes into developing these projects—is over $45 billion to 2014. That does not include 15s. These are significant dollars. They pale in comparison with some of these tax numbers that are thrown out.

Senator EDWARDS: Australian dollars?

Mr Krzywosinski: The se are Australian dollars, yes. The other thing I might add is that we need to get these projects up. They are complex. They have long investment cycles as I mentioned but, when we do get them up and they plateau, these projects will be generating significant income for Australia—and I mentioned in my opening comments—approaching $350 billion of revenue. I know there has been a lot of interest as to where these moneys go and so on and so forth. It is up to government to actually allocate where the dollars go, but $338 billion or $350 billion dollars in revenue will buy a lot of hospitals. It will purchase a lot of schools.

Senator DASTYARI: If it is properly taxed.

Mr Krzywosinski: This is the revenue.

Senator EDWARDS: That is the tax.

Mr Krzywosinski: This is why it has got to be very clear: this is the revenue. There is a lot in it for Australia and, if we can work together, we can make this happen. It is going to be a great outcome.

Senator EDWARDS: If I read this, all that information will be contained there.

Mr Krzywosinski: If I can go through all the other numbers, but we have invested over a billion dollars in research and development. We spent nearly $1.5 billion in exploration—that kind of gets lost in these numbers, because the investment to date pales in comparison.

I also might add, since you are going to give me a little bit of time here, you have referenced an article there. What I found over the last few days and weeks is those articles in the media have been informed by this International Transportation Workers' Federation supported report, which somebody had a copy of up there—I saw it—that seems to be referenced. I can tell you categorically that that document is riddled with inaccuracies, misconceptions, misrepresentations. If we have the time, we are happy to go down exactly where—

CHAIR: I don't think there is much time.

Senator EDWARDS: I am happy for you to do it because, if these people are getting these stories up at the beat, this is your opportunity to get your defence out into the public space.

Mr Krzywosinski: The first inaccuracy: Chevron has stashed over $35 billion in untaxed revenues and offshore accounts—that is categorically incorrect.

Mr Macfarlane: The funds that are referred to in financial statements are amounts that have been indefinitely been invested abroad, but those are amounts that have been taxed. Those are amounts that have been earned in our
operations throughout the world and taxed in the jurisdictions in which we operate, so these are not untaxed
profits; these are tax profits that have already been taxed.

Senator EDWARDS: Okay, point one.

Mr Krzywosinski: Point two: there was a reference in that document—Chevron's latest tax scheme currently
under investigation by the ATO could reduce Chevron's tax bill by $35 billion or more. That is just incorrect. It is
not even a misrepresentation; it is just incorrect.

Senator DASTYARI: This is the $35 billion, we are talking about—what is being audited by the ATO? Is
that what you are referring to or not?

Mr Krzywosinski: I am quoting from the report that you were referencing.

Senator EDWARDS: The story of last Tuesday, 10 November, which appeared in a prominent financial
daily.

CHAIR: We are talking about this document. Can I just ask the report references—

Mr Krzywosinski: May I see the document that you—I just want to make sure—

CHAIR: I think it is the same one you are talking to: Chevron's tax avoidance in Australia.

Senator EDWARDS: Can I just ask you to continue on putting down what you contend is the truth.

Senator DI NATALE: Just as a process point, I am not sure what we are referring to. No one has seen this
document. We are having evidence presented on a document that nobody has actually seen. I think it is really
poor process.

Senator EDWARDS: It was submitted to the committee.

Senator DI NATALE: So which document are we referring to, because it seems—

Mr Krzywosinski: That is why I was wanting somebody to actually—

Senator DASTYARI: Chair, can I make a suggestion? It sounds like Mr Krzywosinski has a detailed
explanation refuting a report that has been put in the public domain. In the interests of time, my suggestion is that
Mr Krzywosinski, you at Chevron provide a written response. We will put that up on the website.

Senator EDWARDS: I think that is blatantly unfair.

Senator DASTYARI: It is currently one o'clock right now.

Mr Krzywosinski: You made a comment that you have got the time and I would like—you were asking—

Senator DASTYARI: Sure. If we want to do this properly so that the other senators have an opportunity to
actually go through it, I am saying that perhaps the best way to do this, Chair—and I am happy to break into
committee to do this—would be that you do some headline stuff now and then go into more detail.

Mr Krzywosinski: I have got several more; it will just take me a minute.

Senator EDWARDS: You do not want to know the truth.

Senator DASTYARI: Senator Edwards, I understand that you guys are going to run a protection racket for
anyone you want to in this inquiry.

Senator EDWARDS: That is absolutely nonsense.

Senator DASTYARI: I am not copying this from you. I am not copying this at the end of this inquiry.

CHAIR: Mr Krzywosinski, you are referring to a document; I was referring to a document. We think we have
got two different documents perhaps that we are looking at.

Mr MacFarlane: I think it is the same document. It is dated 9 November.

Mr Krzywosinski: I cannot tell what date it is.

CHAIR: It is a submission to the Senate inquiry on corporate tax avoidance.

Mr Macfarlane: That is correct.

CHAIR: We are talking about the same document.

Mr Macfarlane: It was submitted to the committee on the 9th, yes.

CHAIR: Okay.

Mr Krzywosinski: The next point is: 'Chevron has set aside $350 million to settle a previous Chevron tax
scheme being litigated by the ATO.' Again, this statement is incorrect.
Mr Macfarlane: That shows up in the accounts that are filed with the securities commission. That is not related to this case; that is related to all tax issues associated with Chevron Australia.

Senator McALLISTER: Is that a contingency fund, Mr Macfarlane?

Mr Macfarlane: Yes, it is in accordance with our requirements under the accounting rules to set aside any contingencies necessary for tax issues.

Senator McALLISTER: Do you have a rule of thumb, or is that calibrated against actual expectation about liability associated with litigation?

Mr Macfarlane: We follow the standards under the Australian accounting rules, and there are requirements in terms of how you determine those.

Senator EDWARDS: I want to finish this evidence; I do not care if I stay here until midnight. I do not care how long we sit; we have done it in other committees. I am not going to have justice short-served. I want to hear all the evidence. You two fellas from Shell and Exxon are sitting out there all very happy right now; I want to give you the same opportunity to participate. I am very interested to know if these things are going to get a run-on in the press and carry on for a week. This is Chevron's first opportunity. They are a major employer in this country. They pay billions of dollars of wages every year, which comes in in revenues—I do not need to give you the lecture. I want these people to be heard.

CHAIR: I think we should allow that. I will put everyone on notice that we may be going beyond the cut-off time for lunch, so I am prepared to extend it.

Senator McALLISTER: If we are going to step through this, it is not my intention to grandstand, but there will be questions of clarification that I would like to ask, and I have not spoken at all in this session, so from time to time I am going to ask a question.

CHAIR: I am conscious Senator Di Natale also has some questions.

Senator EDWARDS: I am here till midnight, so the other companies can have as much time as they like.

CHAIR: Mr Krzywosinski, how much further have you got to go?

Mr Krzywosinski: There was a comment: 'The US government has not approved Chevron's tax filings for over 7 years'. Again, that is very misleading.

Mr Macfarlane: That is a misunderstanding of how the tax system works in the United States. Large companies like Chevron are under continuous audit examination. We have Internal Revenue Service auditors that sit on our premises. We are at a normal point in the schedule. Much like other taxpayers for 2009, we are just now wrapping up one last issue that we had. We are finishing up our exam for the years 2010 and 2011. We have not even begun our exam for the years following that. It is normal process. We work through things. The law is complicated, and the fact that we are examined is usual. It does not mean that anything has been found. Oftentimes they look at things and there are no adjustments whatsoever in connection with the things that they look at.

Mr Krzywosinski: There are several more, but, in the interests of time, I think you are getting the point here. The annual report shows that, while operating revenues have been over $2.5 billion per year since 2011, interest charges payable to Delaware have increased from 26 to 62 per cent of operating revenue. Again, this is categorically incorrect. The interest that is largely incurred is capitalised during the construction phase and it does not impact on this result.

Mr Macfarlane: Some of this stuff goes back to years before people in this room were born—years in the 1970s. These are all things that were resolved in the ordinary courts.
CHAIR: Thank you, Mr Krzywosinski. Before we move forward, does anyone have any further questions?

Senator EDWARDS: I do. Chair, I would ask if you would refer the reflection which Senator Dastyari made on coalition senators running a protection racket for companies. I think that is inappropriate. I think that was out of order. I think it was intemperate. I think he should address this committee right now.

Senator DASTYARI: In the spirit of the bipartisan fashion in which so much of this work has been done, I withdraw any inference and I apologise for any inference made about coalition senators.

Senator EDWARDS: Thank you. That is accepted.

Senator BACK: You are best mates again!

Senator DASTYARI: Besties! But I am still not going to grow a moustache.

Mr Krzywosinski: If I may make a final comment, the reason I bring these points up is to make sure that there is an understanding here. From some of the feedback, I think that the report some of this media has been based upon is wildly inaccurate.

Senator EDWARDS: I do not know why they hate jobs creation.

Mr Krzywosinski: It just shows a lack of basic understanding.

Senator DASTYARI: Are we going to go down the path of withdrawing statements?

Senator DI NATALE: Seriously, Chair, how much longer do we need to endure this sort of stuff?

Senator EDWARDS: I did not call for this hearing.

Senator DI NATALE: Maybe you might want to vacate the space and let some of us engage in it a bit more constructively.

Senator EDWARDS: Thank you, Father Di Natale.

CHAIR: I am going to call Senator Di Natale.

Senator DI NATALE: Thank you very much for attending today, Mr Krzywosinski. I appreciate you presenting to the inquiry. I have just been looking through the ACIL Allen report. I am looking specifically at the fine print on taxation, and I cannot see any calculation for tax deductions for the interest on debt included in the report. Was that done as part of the modelling?

Mr Krzywosinski: It would help if you could specifically refer me to what you are—

Senator DI NATALE: What I am saying is that I cannot see any allowance in this report, when you talk about the economic benefits—

Mr Krzywosinski: Okay, I am looking at it.

Senator DI NATALE: There is nothing in there about tax deductions for the interest on debt as part of the modelling that has been done.

Mr Krzywosinski: They took it into account for our share—for Chevron's share—because Shell and—

Senator DI NATALE: But not for this?

Mr Krzywosinski: Shell and Exxon are contributors or investors. We do not know how they are funding these projects, but we know how we are funding them.

Senator DI NATALE: But that is pretty simple. You are touting the benefits here, but there is a significant cost associated with those tax deductions for interest on debt and you have not factored that into any of the modelling that has been presented here.

Mr Krzywosinski: I would suggest that the assumptions based upon foreign exchange and commodity prices would far overwhelm any assumptions made about how these projects are funded.

Senator DI NATALE: But we are talking about tens of billions of dollars.

Mr Krzywosinski: It is tens of billions of dollars if the oil price is different than what has been assumed here. I believe they assumed a $70 or $75 barrel.

Senator DI NATALE: I would have thought that was a very significant factor to include into the modelling if we are going to be talking about the economic benefits. It just seems like it has not been included in the report or in the document.

Mr Macfarlane: The taxes are modelled out and I assume that would have been taken into account.

Senator EDWARDS: Sorry, Mr Macfarlane. I could not hear.
Mr Macfarlane: The taxes are modelled out. The $338 billion that is expected to be paid in government revenues would include the taxes. Deductions would have reduced that, but we are still talking about $338 billion.

Senator DI NATALE: The deductions would have reduced it, but it is not included in the modelling?

Mr Macfarlane: That is not what I said. I think it would have been included in the report.

Senator DI NATALE: No, there is nothing in here that says that.

Mr Krzywosinski: For ours.

Mr Macfarlane: For ours.

Mr Krzywosinski: This is modelling the 100 per cent impact of the Gorgon and Wheatstone projects. We have got partners on both projects. So I do not know how all of my partners are actually funding their equity share of the projects. The only thing I can model is how I am funding it.

Senator EDWARDS: Chevron.

Mr Krzywosinski: How Chevron is, sorry. So that is what went into the model.

Senator DI NATALE: But not tax deductions for interest on debt?

Senator BACK: But interest on debt would be an allowable deduction before you pay tax, would it not?

Mr Krzywosinski: Yes.

Mr Macfarlane: That is correct.

Mr Krzywosinski: The interest is capitalised. So yes, it goes into the calculation.

Senator DI NATALE: Hang on; that is different from what I thought you just said.

Mr Krzywosinski: For our investment.

Senator DI NATALE: Are you saying it is included or not included? This is important. You have an opportunity to correct the record, here. Have they been included in the modelling that was done by ACIL Allen?

Mr Krzywosinski: It is my understanding that our share has.

Senator DI NATALE: Your understanding is that it has been included.

Mr Krzywosinski: My share, Chevron's share.

Senator DI NATALE: We will follow up. You will have an opportunity to correct the record if that is not proven to be accurate.

Mr Krzywosinski: Thank you. Let me confirm that.

Senator DI NATALE: Take that on notice and come back to us.

Mr Krzywosinski: I am happy to confirm that.

Senator McALLISTER: One of the assumptions provided by ACIL, on the back of the document, says that total project taxation estimates should be treated with caution as they do not take into account any debt deductions of joint-venture partners, except for Chevron.

Mr Krzywosinski: That is what I was saying.

Senator McALLISTER: We can clarify that, in fact, the modelling does not—the total taxation may well be overstated.

Mr Krzywosinski: It does include Chevron but does not include—

Senator DI NATALE: So one-sixth of that has been included.

Mr Krzywosinski: Just to clarify, if I may, with the Gorgon project we are roughly a 50 per cent interest holder. As Shell and Exxon mentioned, they are both 25 per cent. If our share—it is modelled in those finance costs.

Senator DI NATALE: So 50 per cent of it is included and 50 per cent of it is not included—

Mr Krzywosinski: That is correct.

Senator DI NATALE: which is significant. What would you say that is worth?

Mr Krzywosinski: I do not know.

Mr Macfarlane: We cannot speak to what the borrowing costs are of our partners.

Senator DI NATALE: It is significant. If you are touting the economic benefit and putting a dollar value next to it, and then you are saying there is this big unknown quantity worth tens of billions of dollars—

Mr Krzywosinski: That is why we footnoted it, because that was one of the uncertainties.
Senator DI NATALE: You have put in big bold letters what you expect to be the real incomes to be delivered through the project and, in fine print, at the last point we take it that Chevron may have included it but 50 per cent of that is not included in the report.

Senator BACK: You are not quoting incomes, you are quoting the return to the federal government as taxation.

Mr Krzywosinski: That is correct.

Senator DI NATALE: The point stands that 50 per cent of interest on debt is not calculated in this report. I am just trying to get clarification.

Mr Macfarlane: That is not necessarily true. It is saying the financing costs for our 50 per cent are included. With respect to the other partners, we do not know what costs they may have—an estimate, if you like.

Senator DI NATALE: You do not know, which means they are not included.

Mr Macfarlane: It is not information we would have.

Senator McALLISTER: The modelling approach might have been simply to project either a reasonable assumption about the financing costs or your own actual experience onto the components of the project funded by other parties.

Senator DI NATALE: A few assumptions might have been able to tease that out a bit more.

Senator BACK: The witnesses are going to provide on notice what the actual modelling was, and I think that will answer the question.

Senator DASTYARI: Have criticised everyone else's submissions and reports and yet you are looking at the modelling they have used themselves.

Mr Krzywosinski: Just to clarify, the ACIL Allen report is using the highly respected equilibrium economic model that both sides of the aisle use for means testing policy reform. It is a highly respected model. It is one that we can respect and appreciate.

Senator DI NATALE: I am not questioning the model.

Mr Krzywosinski: It was a comment that suggested that perhaps there was—

Senator DI NATALE: My issue is that this is a fairly significant hole. I take it that it has been included in the fine print. I did not see the bit that said you guys have factored in your calculation, which might amount to 50 per cent more or less depending on where—

Mr Macfarlane: It depends on what our partners do.

Senator DI NATALE: I accept that. It does throw into question some of the figures we are talking about, doesn't it?

Mr Krzywosinski: Also, I guess, the information I will submit on notice is the sensitivity associated with commodity price. When you see that, it will far overwhelm the revenue contribution. We will provide that for clarity.

Senator DI NATALE: I don't know. It was $30-odd billion. That is Australia's budget deficit. It is a pretty big number. It might be overwhelmed by other numbers but it feels like a pretty big number to me.

Mr Macfarlane: The $30 billion tax savings is a wrong number. That is a misstatement that was made in the report. The interest expense will be nowhere near that. We do not know, exactly, what it will be but that would require that you have interest expense of $105 billion, roughly. It is going to be nothing like that.

Senator DI NATALE: Half?

Mr Macfarlane: I do not know. Over the last five years our interest expense—

Senator DI NATALE: Would it be $10 billion or $20 billion? What are we talking?

Mr Macfarlane: Over the past five years—this is in our submission.

Mr Krzywosinski: Sorry, what was the question?

Senator BACK: The interest component.

Mr Krzywosinski: The interest component of the project.

Senator DI NATALE: You have questioned the $30 billion figure and I am just getting a sense of—

Mr Krzywosinski: There are a lot of variables there. It is going to depend upon how quickly we pay off the loan and so on and so forth. But it can be in the order of—
Mr Macfarlane: Probably the biggest unknown is what are the commodity prices going to be. We are in a position—

Senator DI NATALE: You are about to spend in the order of $15 billion, was that right? Just give me a ballpark figure.

Mr Krzywosinski: Yes, 15.

Senator DI NATALE: It is a lot of money.

Mr Krzywosinski: Yes, what I am saying is a $5 difference in the oil and gas prices will far overwhelm that number.

Senator DI NATALE: Sure, but $15 billion is $15 billion.

Mr Krzywosinski: I understand. I think that is a lot of money.

Senator DI NATALE: It is a lot of money.

Mr Krzywosinski: It is a lot of money. I agree with that.

Senator EDWARDS: It is $15,000 million.

Senator DI NATALE: I am confused about the currency question. Under the heading Currency Translation, the US 2014 financial report states:

The U.S. dollar is the functional currency for substantially all of the company's consolidated operations and those of its equity affiliates.

That is obviously a statement of fact.

Mr Macfarlane: That is for US GAAD reporting for accounting purposes.

Senator DI NATALE: Chevron Australia's directors' report says that their functional currency is Australian dollars.

Mr Macfarlane: For tax purposes, for Australian tax filings, that is correct.

Senator DI NATALE: Is that because Chevron derives a tax benefit by lending to Australia in Australian dollars and then stepping up the interest rate—the lending in US dollars? I am not questioning the legality of it. It is obviously legal. I am just asking the purpose of doing that.

Mr Macfarlane: It is clearly legal. The functional currency for tax purposes—to date, this also been for Australian accounting purposes—has been the Australian dollar. We have huge expenses that are incurred in Australian dollars. Roy, what percentage of our expenditure over the life of these projects has been in Australian dollars?

Mr Krzywosinski: Currently for Gorgon it is over 80 per cent Australian dollars.

Senator DI NATALE: I understand that.

Mr Macfarlane: I suppose the environment in which we operate—

Senator DI NATALE: But I cannot understand—

Mr Macfarlane: We have lent in in Australian dollars in our functional currency. If we had lent in in US dollars then they would be subject to the foreign exchange gains or a loss that could be subject to tax. In fact, if we look at the current balance, and if the loans had been incurred in dollars, we would be sitting on about a $10 billion deductible loss in Australia. That is not what happened because we lent in in Australian dollars. But if we lent in in US dollars we would be sitting on a huge tax—

Senator DI NATALE: Why tax, is that because of the currency fluctuations?

Mr Macfarlane: Because of the currency fluctuations.

Senator DI NATALE: But surely—

Mr Macfarlane: We did it in Australian dollars.

Senator DI NATALE: The taxation benefits—I am just looking at the relative proportions of both of those things—

Mr Macfarlane: We are not smart enough to predict the exchange rates going forward—just like the commodity prices.

Senator DI NATALE: So you would not argue that the dominant purpose of that decision is to derive a tax benefit.
Mr Macfarlane: Yes, I would dispute that. We will say that you look to the economic environment in which you operate. Our expenses were largely in Australian dollars so that is why we were in Australian dollars. When we decided to loan in we lent in in Australian dollars because there was a need for Australian dollars. It also had the effect that it insulated us from the possibility of huge exchange gains which would be taxable in Australia as well.

Senator DI NATALE: Why do those US financial reports state that the functional currency for all of the company's consolidated operations and those of its equity affiliates is in US dollars?

Mr Macfarlane: It is what I said before. That is under the Financial Accounting Standards Board rules, under the US accounting rules. It is a separate set of rules and it is US dollars throughout the Chevron entities in almost all cases.

Senator DI NATALE: Do you think that accurately reflects what happens in practice?

Mr Macfarlane: I do not understand your question.

Senator DI NATALE: When I look at 'the company's consolidated operations and equity affiliates', I assume functional currency is US dollars. If I were a shareholder and I read a financial report—

Mr Macfarlane: It is functional currency for a number of different reasons. It is functional currency under the FASB rules, how we report to the SEC, it is functional currency for tax purposes—

Senator DI NATALE: As a shareholder or a punter, I am interested—

Mr Macfarlane: Would you like to know the answer?

Senator DI NATALE: I am interested in accessing a US financial report that tells me that your functional currency is US dollars. I am not interested in the various acts that might dictate that, but surely as a punter or a shareholder I want to look at a financial report and get an understanding about whether that is an accurate statement, and clearly it is not. I understand that you are doing it to comply with a number of laws—

Mr Macfarlane: It is an accurate statement.

Senator BACK: If it were not accurate, they would be pulled up by the—

Senator DI NATALE: Well, that is according—

Mr Macfarlane: We filed these statements with the Securities and Exchange Commission in the United States.

Senator DI NATALE: I understand that.

Mr Macfarlane: This is in accordance with the US rules applied by the SEC and the FASB.

Senator DI NATALE: I am not implying that you are doing anything that is inconsistent with US jurisdiction. What I am trying to get to is that, if I read that, the assumption is that your functional currency is US dollars, and here you are in Australia saying, 'No, all our functional currency is Australian dollars!'

Mr Macfarlane: For tax purposes and for Australian accounting purposes. It is a different set of rules; it is a different jurisdiction. One of the difficulties of operating in a multinational environment is that, when you operate in multiple countries, each one has its own rules. What we have done through all of this is try to ensure that we operate within the accounting rules, within the tax rules and within the other rules that are applicable in Australia and that are applicable in the United States and anywhere else that we operate. That is what we have done. There is nothing going on here other than following the rules which are applicable.

Senator DI NATALE: Can I ask about the $2.2 billion of shares in the Australian company that were issued to the parent company in Delaware. What was the commercial purpose of that transaction?

Mr Macfarlane: At which point are you talking about?

Senator DI NATALE: There was a $2.2 billion share transaction where there was a transfer to the parent company in Delaware. I am just trying to understand what the purpose of that was.

Mr Macfarlane: Is this in 2003?

Senator DI NATALE: I have not got a reference for the year; I am sorry. But I will take it that 2003 is the year in which that occurred.

Mr Macfarlane: After the merger of Chevron and Texaco, there were Chevron operations and there were Texaco operations in Australia and they were combined. At that time, there was a recapitalisation of the company, and that is what this relates to, if I understand correctly. It is hard without a reference to the date, but if that is what you are talking about—
Senator BACK: If you are saying that information needs extending, Mr Macfarlane, you might be kind enough to take it on notice.

Senator DI NATALE: Can I just ask a final question on the petroleum resource rent tax. Perhaps I might bring in—before you guys fall asleep—

Mr Macfarlane: They are feeling neglected, I am sure.

Senator DI NATALE: This is just an open question. Were any of you involved in the negotiations around the development of that tax? I think at the time it was the Gillard government and Martin Ferguson was the minister responsible.

Senator BACK: The PRRT goes back many, many years.

Senator EDWARDS: Back to 1987, I reckon.

Senator BACK: You were talking about the mining—

Senator DI NATALE: That was established under—I think it was Ross Garnaut, wasn’t it? Perhaps I will ask you that specific question: were any of you involved specifically in the negotiation of that tax?

Mr Smith: I think I had just started work at that time.

Senator EDWARDS: That is a lovely answer!

Senator DI NATALE: I think, given the time that has—

Mr Macfarlane: I was not.

Senator EDWARDS: Mr Owen, you were not born then?

Mr Owen: I was born then. I had been working for ExxonMobil for four or five years at the time when we changed from an excise system to a resource rent tax system, but I was not involved in the negotiations.

Senator BACK: For the record, during the course of the discussion I have been able to establish from international shipowners that the majority of the major oil and gas tanker companies in the world have their registered offices in Bermuda. I would just like to put that on the record. Mr Macfarlane or Mr Krzywosinski, you referred to loans in 2003 and I think in 2009-10. Did you seek rulings from the Australian Taxation Office in advance of those loans being executed?

Mr Macfarlane: We did seek rulings from the Australian Taxation Office in 2003 in connection with that loan set-up. It was not with respect to the price, but it was with respect to some other tax arrangements associated with it. In 2009 we initiated discussions with them to try to work out a prior arrangement on the loans for 2009 going forward. I think it was basically overtaken by the earlier case, and so those discussions were never resolved.

Senator BACK: Can I ask whether or not interest rates were actually the subject of discussion or disclosure in those communications with the Australian tax office?

Mr Macfarlane: When we set up the rates, we did so seeking external advice. We went to investment banks to determine what would be an arms-length rate and we used that as a benchmark to determine the appropriate rates. As I am sure you can appreciate, there can be some variability. If you go up for a loan on your house or your car or anything else, the quotes you receive from everyone are not the same so there is some variability in what you would get. We went to respected international banks and sought their advice on that.

Senator BACK: Can I ask you then were the rates consistent with what was available in the market at that time?

Mr Macfarlane: Yes they were.

Senator DASTYARI: That is a point that is in dispute, isn't it? Is the arms-length nature of it what is in dispute? I thought the question around the rates and the arms-length nature of the rates is your version versus the ATO version, which is in court in dispute.

Mr Macfarlane: My response to the senator was that we sought external advice and the rates that were set were consistent with that external advice, but there remains a dispute on that question.

CHAIR: I have a question for Mr Smith. I am interested in your internal structures within the company. I note you are here today as the country chair. In the interests of making sure that you do not feel neglected in the whole proceedings, are you also a director of Shell Energy Holdings Australia or Shell Australia Pty Ltd?
Mr Smith: Yes, I am a director of Shell Energy Holdings Australia Ltd and Shell Australia Pty Ltd, the operating companies of Shell industry.

CHAIR: What are your KPIs and your team's KPIs in the company measured on? Are they measured on maximising the profit of the Australian registered companies or maximising the benefit to the consolidated global company? How are you judged?

Mr Smith: My performance scorecard has various measures on it. The first and probably the most important is the safety performance of our operations in Australia. There are a couple of measures. There is personal safety performance but also process safety performance. There are measures around the financial performance of the company, which are particularly around cash flow from operations.

CHAIR: Is that in Australia?

Mr Smith: Yes. I am responsible for Shell's operations in New Zealand as well as in Australia. Also on my scorecard is delivery of projects; for example, the safe and reliable commissioning of the Gorgon project, the delivery of the Prelude project and getting the Browse project through to final investment decision, and there are ambitions around time for all of those measures of my scorecard.

CHAIR: What about maximising profit of the Australian register?

Mr Smith: Yes, that is the objective of my scorecard but of course there are financial and non-financial measures. The financial measure is just about the Australian business.

Senator McALLISTER: I want to follow up about some of the issues around shipping that we were discussing earlier. In your submission, you indicate that $309 million was paid to a Bermuda based shipping company between 2010 and 2015. Is that correct?

Mr Macfarlane: I do not have the submission in front of me.

Senator McALLISTER: It is on page 9 of your submission in the second appendix. You indicated earlier that that represents a proportion of the overall shipping costs associated with the North West Shelf project. Do they accrue equally to all six partners or is yours a greater proportion than others?

Mr Macfarlane: We are a one-sixth taker of the gas so over time it would certainly be one-sixth of the total costs of transport. I do not know whether individual cargo is matched up in each particular year but certainly over time it would be one-sixth.

Senator McALLISTER: So the total shipping cost over that period might be in the order of, say, $1.8 billion or something like that. Is that a reasonable estimation?

Mr Macfarlane: That is probably about right. I might also add that at the time that the shipping arrangement was put in place, we received a ruling from the Australian tax office on the treatment of this.

Senator McALLISTER: What percentage of the value of sales for you from the North West Shelf project is then paid out to transportation costs?

Mr Macfarlane: I do not have that information at my fingertips.

Senator McALLISTER: I am just interested to understand whether it is an unusually high proportion of costs.

Mr Krzywosinski: I would have to go back and look at those specifically.

Mr Macfarlane: Transportation of gas is a relatively expensive thing because the ships are extremely expensive. They are very sophisticated. It requires that you keep the gas refrigerated and they are really dedicated to the trade that we have got going here with the long-term contracts so I do not know what it is as a percentage.

Senator McALLISTER: Could I ask you to provide on notice what the total value of sales in that same period was and then we could get an indication of what percentage of that were shipping costs.

Mr Krzywosinski: We would be happy to.

Senator McALLISTER: Can I also ask in a similar way about the payments for shipping. A $20 million payment was made last year to a Singaporean related party. Which related party is that? Which entity in Singapore is it? It is on page 9 of your submission.

Mr Macfarlane: I am not sure exactly which entity it is. I think it is Chevron Singapore Shipping—I do not have the name exactly right.

Senator McALLISTER: The explanatory note below that table in your submission says that that amount provided LNG shipping services to the Gorgon project.
Mr Macfarlane: The Gorgon project has not started to produce but when we ordered the ships, we had an expectation that the Gorgon project would be online by now and that we would be needing shipping services so there are some shipping costs that have been incurred in connection with Gorgon. Basically we have got equipment that is waiting for the plant to start up.

Mr Krzywosinski: I had a feeling it was set up in anticipation of Gorgon being in a situation where it would be exporting LNG in 2014.

Senator McALLISTER: So they are essentially set-up costs.

Mr Krzywosinski: Set up costs, yes.

Senator McALLISTER: There are some remarks in your submission around the affiliates in Singapore which are involved in commercialisation, trading, marketing and transport of products sourced from Australia. I am trying to understand how the tax arrangements work in that pass-through process. Are those sales then booked in the Singaporean jurisdiction and do you pay tax there or do you pay it here?

Mr Macfarlane: The only gas that is being produced right now is the North West Shelf. All the revenues associated with the sale of the North West Shelf gas are reported in the Australian tax return.

Senator McALLISTER: So tax is payable in the US?

Mr Macfarlane: It would be taxable in Australia and would be taxable in the US as well.

Senator McALLISTER: But you are not paying tax twice though?

Mr Macfarlane: There is a foreign tax credit that is available so the taxes we pay to Australia can then be used as a credit to offset the liability on the US income.

Senator McALLISTER: Are all of the products that are being marketed and sold through the Singaporean hub then being booked back to the Australian arm?

Mr Macfarlane: In the period that we are looking at here from 2009 through 2014, the only services that were provided in Singapore related to some condensate and crude sales. The charge for that was a volume based charge and was based on the same price as we had been receiving for the same services from a third party. It is only about $2½ million so it is fairly de minimus in the scheme of all of this. That was the only thing in this period where we had services provided by Singapore.

Senator McALLISTER: What do the marketing costs that were paid to the related parties in the UK and Japan for Gorgon relate to? It is on page 9. At the bottom of page 9, the table indicates that there was $10 million paid to a related party in the UK for marketing purposes in 2010 and 2011.

Mr Macfarlane: I am not completely certain on this. I think this might have been with the Japan customers in Japan. There may have been some of the costs of liaison officer or something in Japan but I do not know.

Mr Krzywosinski: There are a small satellite offices in wherever the target markets might be. I do not have a tabulation of the actual $5 million or $3 million but I suspect they are costs associated with those offices. Once we establish long-term contracts, we do local coordination with the local customer. In this case, all of our equity LNG is going to Japan, or the lion's share of it is going to Japan, so I suspect that is what those costs would be.

Senator BACK: With regard to Prelude, the floating LNG project, is there any difference in the tax treatment of a floating LNG project as opposed to construction on land?

Mr Smith: The taxation treatment of LNG projects in Australia, in a way, does depend on where they are. The floating LNG project is entirely in Commonwealth waters whereas for some other projects it is a mixture of being in a state jurisdiction and Commonwealth waters. The tax arrangements that apply to Prelude are the Commonwealth ones rather than any state based ones. For example, our Arrow project in Queensland pays royalties which are set by the Queensland government.

Senator BACK: So there is no difference in taxation treatments of construction costs?

Mr Smith: No, not that I know of.

Senator DASTYARI: I would like to ask a question that will explain something that I may have misunderstood. Mr Macfarlane, what is the global debt for Chevron? What is your global debt figure?

Mr Macfarlane: I think we had long-term debt at the end of 2014 of US$24 billion.

Senator DASTYARI: How much is the Australian figure of debt?

Mr Macfarlane: I believe it is about A$36 billion.

Senator DASTYARI: So that $36 billion is in Australian dollars and the $24 billion figure you have given to me is in US dollars?
Mr Macfarlane: That was at the end of 2014. It has increased over time.

Senator DASTYARI: You are probably going to have to take this one on notice. I assume that debt has been accumulated over different points of time. The cost of borrowing post the global financial crisis—we call it the GFC here; I know they call it something different in the US—has obviously fallen from where it was before. I assume that some of the more recent debt out of the $24 billion would have been at a lower interest rate than older debt, just by the nature of what it costs to borrow money. Is that a fair assessment, Mr Macfarlane?

Mr Macfarlane: It would depend on the term—it would depend on when we did the borrowing.

Senator DASTYARI: But, as a general principle, it is cheaper to borrow money now than it was 10 years ago.

Mr Macfarlane: In general, world interest rates are fairly low at this point.

Senator DASTYARI: Would you have a breakdown of how much of that $24 billion was borrowed at 0.2 per cent, which I think is the figure that has been bandied around for what Chevron has recently borrowed at? I do not assume you have those figures with you now and it would be unfair to ask you for them now. Are the figures for the rates at which that amount was borrowed at available?

Mr Macfarlane: I do not have them at hand. I believe they are disclosed in our 10-K in our corporate filing.

Senator DASTYARI: Is that something, Mr Krzywosinski, you can take on notice and provide to us in writing?

Mr Krzywosinski: Can we record the question just so we are answering the right question?

Senator DASTYARI: Sure, and the committee will write to you more formally with the question. The question is this: for the $24 billion in debt that is held by the global parent—the US debt—what were the different rates at which that debt was borrowed? I assume you will find the more recent debt accumulation was at a lower rate than the older debt, just by the nature of how markets have moved recently. I just want to get my head around that. The point I wanted to clarify, which you have clarified, is: that $24 billion is in US dollars; the $36 billion is in Australian dollars. If we are going to compare like and like, you are probably looking at—

Mr Macfarlane: It is not exactly like and like because the $36 billion is a current number. The $24 billion is at the end of 2014. We have incurred additional debt, especially with the low commodity prices, during this past year.

Senator DASTYARI: Fair enough. Regarding the current audit by the ATO and the $2.5 billion dispute that is before court, does that mean that, because you are challenging that, you are not changing anything to do with the other loan arrangement yet until you see where this court thing ends up?

Mr Macfarlane: First of all, it is not a $2.5 billion dispute; $2.5 billion is the US dollar amount of the loan.

Senator DASTYARI: Sorry, fair point—you are right.

Mr Macfarlane: The rates for the current facility is different than the rate at which the initial facility was done. As I said before, it is BBSW plus 2.63.

Senator DASTYARI: But the court cases are related. Sorry, the determination of the court case may have an impact on the dispute process you are going through about the second, larger—

Mr Macfarlane: It could.

Senator DASTYARI: But you are not changing anything until you get to the end of this court process?

Mr Macfarlane: We have changed things. We have a different debt structure in place starting in 2009, and the rate was set at a market rate then. So it reflects the timing of the market. The appeal certainly can have a bearing on the later years. We do not know.

Senator DASTYARI: This only happened 10 days ago. Is it correct that you have not changed anything in the past 10 days because of that Federal Court ruling, in part because you are challenging it?

Mr Macfarlane: We believe that the debt we have in place is done in accordance with Australian rules for the later years as well. We have not changed anything with regard to the decision—

Senator DASTYARI: If you go through the court process regarding the $2.5 billion loan—you are obviously going to appeal it, which is your right—depending on the outcome of that process, could you retrospectively then change the structure of your other loan arrangement, because the two may have an impact on each other, or are you keeping your options open?

Mr Macfarlane: The issue that was raised in the decision by Justice Robertson was: what was the appropriate rate and was there sufficient evidence before the court to show what the appropriate rate was?

Senator DASTYARI: And whether it was at arm's length.
Mr Macfarlane: Yes, to show that it was an arms-length rate. For later years, the question is still: is it an arms-length rate? That is the test under the Australian law; we comply with the Australian law. There may be learnings that we have from any appeal as to how the court would view how you determine what an arms-length rate is. I mentioned before that the secured lending rate seems to be something that has come into play as a result of the decision from Justice Robertson. I think, until we have this issue resolved, we will not know what it tells us. It may tell us nothing. The issue in the first case, as I said, is a question of evidence at this point—our ability to carry the burden of proof. Obviously, for the later years, we would have another opportunity to prove things up. It would not be before the same judge or the same proceedings.

Senator DASTYARI: Is the $24 billion in global debt discounting the $13 billion you have in cash or is that separate to the $13 billion you have in cash?

Mr Macfarlane: That number is the long-term debt shown on our financial statements.

Senator DASTYARI: That is separate to the $13 billion in cash you have?

Mr Macfarlane: I do not know what our current cash is, but the debt would be different than cash.

Senator DASTYARI: No, it was not the headline—

Mr Macfarlane: That is a liability and cash is an asset.

Senator DASTYARI: I just was not sure how you made that calculation. Is that $13 billion figure wrong? You do not have that in front of you. Does that sound about right to you?

Mr Macfarlane: I do not have it in front of me. It takes a certain amount of cash, working capital, to run our business, so it fluctuates. We have been a significant borrower in the market in the last year or nine months and over the course of 2014. We did another borrowing just last week—a public offering of debt. So we have been borrowing a lot of money. The cash balance that we have fluctuates depending on what we borrowed and cash coming in and out. It is a complex organisation.

CHAIR: Thank you very much, gentlemen, for appearing before us today and participating in the spirit that you have.

Proceedings suspended from 12:52 to 13:26
My apologies for a slightly later start this afternoon. I now welcome Mr Brad Kitschke, from Uber, and Mr Sam McDonagh, from Airbnb. Thank you for appearing before the committee today. I invite you to make a brief opening statement should you wish to do so.

Mr Kitschke: Thank you, Chair and senators. We appreciate the opportunity to appear today and thank the committee both for its invitation to provide a written submission and for the invitation to appear and assist committee with its deliberations. We are a technology company that provides a software application that connects drivers and riders in over 64 countries and 354 markets around the world, enabling people to push a button and get a safe and reliable ride within minutes. For drivers, Uber fits around people's existing commitments, in particular child care. These new opportunities help get the unemployed back to work. For cities, services like Uber can improve everyone's quality of life. For example, people are less likely to drink and drive if they know that they can get a ride home late at night, quickly and easily. And then there is congestion. In cities like New York and Paris, Uber is so popular that we have a ton of passengers wanting to get to the same place at the same time. With UberPool, they can share a ride and cut congestion over time.

The company was founded five years ago in the United States. While we have expanded quickly in that time, we are very much still a start-up and our focus remains on investment to allow us to grow and deliver more services to more people. In Australia, we operate in Sydney, Melbourne, Geelong, Brisbane, the Gold Coast, Perth, Adelaide and now Canberra. The Uber platform first became available in Australia three years ago, and we are proud of the positive local impact we have already been able to have. For example, 18 months ago, we launched our ride-sharing product, UberX, which is a new and different mode of point-to-point transport in Australia. Since that time, Uber has created more than 15,000 economic opportunities across the country for those who partner with the platform. We fully expect that by the end of this year we would have met our commitment to create 20,000 new flexible work opportunities in Australia. In each of the Australian cities where Uber operates we have a local office, employ local staff and become part of the local community. By year’s end we are on track to have created more than 100 jobs across Australia.

Much has been said of the Uber model locally and globally in the press. However, it is important to get some facts on the table. We are unlike other more mature US tech companies. Firstly, and very simply, we are not yet a profitable company. We are a young business investing heavily to bring the service to more people, which means we are not yet profitable, and as you would be aware companies are taxed on profit not revenue.

Secondly, the lion's share of all revenue generated goes to the driver partner and stays local. Of every dollar spent by a rider at least 75 per cent of the fare is kept by the partner, contributing to the prosperity of their local communities, and many of these communities are areas of high unemployment and high underemployment.

Because it is important, I really want to stress that the vast majority of the money stays local. Uber is still a private unlisted company in the early stages of investment, and unlike listed companies we do not provide public detailed accounts. We are a global business and our structure reflects that. For example, we have designed the platform to operate globally. So a rider can sign up in Australia, use the app and get rides in Sydney or Melbourne; then, without having to make changes, they can travel to markets like the Philippines, Mexico, Europe, United States, Singapore or Canada, turn on their phone and use the app, without any adding new information or making any changes. In other words, the app—our platform—has a universality to its operations and function, and this is reflected in the way we have structured our business.

For several years the OECD has been leading an intergovernmental effort to understand multinational corporation structures and the impact these have on corporation taxes paid in different countries. The committee's deliberations, as I have come to understand them, have focused on the global nature of many businesses in Australia. These issues are obviously global issues with global ramifications, and affect more than just domestic policy.

I would also like to touch on a couple of other issues which I am sure the committee is interested in and aware of which relate to taxation. The committee would be aware that Uber is in a dispute with the Australian Taxation Office about its tax guidance, which requires people who undertake ride sharing to be treated differently to any other taxpayer in Australia, and they are not entitled to the GST threshold. The interpretation of a 1999 law means that anyone who even wants to try ride sharing must register for an ABN and submit to ongoing administration of quarterly business activity statements before they have even taken a single trip. This treats ride sharing participants differently to any other participant in the economy.

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We do not agree with the ATO's guidance which they agree is an uncertain area of the law, and we are working to have this matter resolved by the Federal Court. Secondly, we believe there are serious and unanswered questions that remain about the ATO's process and actions in relation to their decision to issue this guidance. I hope that we will be afforded the opportunity to properly explain to the committee and clarify some misinformation and misreporting about these issues.

The sharing or collaborative economy is something that, when compared with most established businesses and business models, is very new. It is challenging both government and business and traditional regulatory and policy approaches. Where possible, Uber wants to work with government and cooperate with them to develop an approach that meets the needs of the economy and allows business to grow.

The best example of this is the recent decision of the Australian Capital Territory to create sensible regulations for ride sharing that open up choice for consumers and economic opportunity for citizens of the ACT. We hope we can have a similar kind of collaborative approach with the federal government in its policy considerations. The federal government is in a unique place to play a role in the incubation of new business, and to embrace technology, innovation and change.

Once again, we thank the committee for the opportunity, and we hope we can assist you in your deliberations.

**CHAIR:** Thank you, Mr Kitschke. Mr MacDonagh.

**Mr McDonagh:** Thank you. And thank you for the opportunity to address this committee. Airbnb was founded in 2008 in San Francisco and is a trusted community marketplace for people to list, discover and book unique accommodation all over the world. We are proud to have a robust community of hosts and guests in Australia and we are committed to being good neighbours and partners with community leaders and governments.

I am not sure how many of the senators here have had the opportunity here to use Airbnb to share their homes, or stayed in homes shared on Airbnb before, but perhaps I could begin with a brief explanation of the ecosystem that Airbnb operates in, before we then discuss our contribution to Australia's economy.

There are two terms that we will use often today. The first is 'hosts', the everyday Australians who choose to list their homes on Airbnb, and the second is 'guests', the people from Australia and all around the world who stay in the homes of our hosts both here and abroad. From the empty-nesters whose kids have left home to the first-home buyers for whom every penny counts, Airbnb lets people turn their greatest expense, their home, into an asset to generate additional income. Our hosts tell us that the ability to rent out their properties and earn an average of $7,100 per year makes a huge difference in paying bills and reducing their mortgage. In Sydney, for example, 84 per cent of those hosts are listing their primary residence, the home they live in every day.

We also take great pride in the contribution we make to local communities across the country. An overwhelming majority of our listings are outside central business district locations, enabling our guests to live like a local and spend money at cafes, shops and restaurants not normally visited by travellers. In fact our single fastest-growing areas in Australia are the western suburbs of Sydney and the outer suburbs of Melbourne. While the number of Australian properties listed on Airbnb is generally doubling year on year, the western suburbs are growing at a rate of about 300 per cent. Blacktown and Parramatta are standouts, growing at 450 per cent.

Airbnb has a large community of hosts across Australia for whom sharing their home is now part of their life. We have over 50,000 properties available in Australia and in just seven years over 60 million guests have spent the night in an Airbnb listing around the world. This is great for cities, businesses and the community.

Airbnb has a small team here in Sydney that performs local marketing and promotional activities. All of the functions are administered by Airbnb Ireland and physically based outside of Australia. We comply with Australian tax laws and pay all required taxes. We also encourage our hosts to do the same.

For hosts, the economic benefit of Airbnb is often life changing and is revitalising for cities, communities and small businesses alike. For one middle-aged host in Western Sydney, Margaret, being able to rent her granny flat on Airbnb has meant that she does not have to rely on Centrelink payments when she attends TAFE to reskill after suddenly needing to get back into the workforce.

Airbnb attracts new visitors who stay longer than traditional tourists, spend more at local businesses and are more likely to return as a result of their experience. Airbnb guests stay 2.1 times longer and spend 1.8 times more than typical visitors, and 35 per cent of Airbnb guests report that without Airbnb they would not have made the travel at all. This is indicative of the economic contribution that Airbnb helps to facilitate in Australia. This additional travel and spending has happened while travel in traditional accommodations has also continued to grow. Hotel occupancy rates in Australia continue to soar as gains made nationally over the last five years are now double the loss that occurred during the global financial crisis, with both occupancies and room rates at levels never previously recorded. Airbnb is fundamentally strengthening our community and creating additional

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opportunities for growth without requiring new investment or infrastructure on the part of government. We believe Airbnb is good for Australians.

Senator DASTYARI: You gave us some really fascinating figures. I just have one or two questions on them. Tell me what you can give me and what you cannot—I think some of these figures may be new and I do not want to put you in an uncomfortable position, although I doubt they would be commercial-in-confidence. How many unique properties are there on Airbnb?

Mr McDonagh: On Airbnb there are more than two million unique listings globally. In Australia there are just over 50,000 listings.

Senator DASTYARI: There are 50,000 unique listings—that is 50,000 different properties?

Mr McDonagh: That is right.

Senator DASTYARI: Obviously this would vary from week to week, but do you have a number for how many people use your service in an average week?

Mr McDonagh: As we are a private company, that is not something I would usually share.

Senator DASTYARI: Mr Kitschke, do you have a figure for how many Australians use Uber? Do you calculate that for a given period of time?

Mr Kitschke: As I have said, we have 15,000 drivers on the road. I think we have made some figures publicly available which I can get back to you with. I think we talked about a million rides earlier this year, but we have not broken it down over any other time period.

Senator DASTYARI: You have 15,000 drivers. Do you have a rough idea of how many Australians use Uber?

Mr Kitschke: We have about a million people signed up to the platform.

Senator DASTYARI: You have about a million Australians signed up to the platform and there have been a million unique rides?

Mr Kitschke: There have been a million unique rides in New South Wales and about a million in Victoria. I think we have done nearly 10 million rides in Australia. I will get back to you on that.

Senator DASTYARI: It is fascinating.

Senator DI NATALE: What proportion of the market do you occupy?

Mr Kitschke: I do not have those particular figures. IPART, in New South Wales, said around 11 per cent of people in New South Wales were using Uber. The difference between a ride sharing service and a taxi is that someone may do ride sharing for one or two hours a week or a month whereas it is assumed that a taxi is on the road for two 12-hour shifts every single day.

Senator DI NATALE: So you do not have a sense of the proportion of trips that are done—

Mr Kitschke: No.

Senator DASTYARI: This inquiry has been looking at some larger established Australian companies, and some of the tech companies that we are looking at are fairly well-established companies that have been here for a period of time. With new and innovative companies such as yours, we are interested in what can be done around getting the tax settings right for Australia. There are issues to do with state regulations and other things, but that is not our focus of interest. Our interest is around taxation. Mr Kitschke, I want to get to you about the ATO matter. I have to say that you are a braver man than I am. I have sparred with Chris Jordan in the past. He is very good. It takes a brave man to take on Chris Jordan! Firstly, Mr McDonagh, you are the CEO of Airbnb Australia?

Mr McDonagh: I am the country manager of Airbnb Australia.

Senator DASTYARI: That is wholly owned by Airbnb Ireland?

Mr McDonagh: Yes.

Senator DASTYARI: If I am staying the night in Parramatta and I book accommodation through Airbnb, that transaction takes place in Ireland?

Mr McDonagh: That is correct. Airbnb is a global platform and all of those operations are managed out of Ireland.

Senator DASTYARI: And it is the same for Uber except that it is in the Netherlands?

Mr Kitschke: That is correct. The platform services 64 countries. It needs to be global to do that.
Senator DASTYARI: To put that into perspective, when I book an ad on Google, the transaction takes place in Singapore. For tax purposes none of the transaction happens in Australia even though I am getting in a car in Australia? The global partner directly pays the driver or the accommodation?

Mr Kitschke: That is correct.

Senator DASTYARI: So the money does not ever come through your company?

Mr McDonagh: That is correct.

Senator DASTYARI: If I put my house in south-western Sydney on Airbnb and someone chooses to stay there, I will get a payment from Airbnb Ireland?

Mr McDonagh: That is correct.

Senator DASTYARI: And if I was doing the same thing with my car, for Uber, I would be getting a payment from Uber in the Netherlands?

Mr Kitschke: That is right. The platform facilitates the payment but essentially the relationship is between the driver and the rider. But the payment will come through Uber in the Netherlands.

Senator DASTYARI: So I am paying the Netherlands and the Netherlands is paying my driver or I am paying Airbnb Ireland and Airbnb Ireland is paying my accommodation?

Mr Kitschke: Yes.

Mr McDonagh: Yes.

Senator DASTYARI: There is no point harping on this. I think this is a significant tax area that we have to look at internationally. I think some of the BEPS process is looking at some of this. I am not going to blame you guys for this but frankly our tax structure is built on a very 1970s model of what is permanent. I do not dispute that you are not doing any different from what others such as Google have done in the past. But you can understand why we are saying this is something that should be looked at internationally if these transactions are officially not taking place on Australian soil for tax purposes.

Mr Kitschke: As I said in my opening statement, 75 per cent of the revenue from any dollar that anyone spends goes directly back to the partner that is resident in Australia.

Senator DASTYARI: But that is their money and they are entitled to it. They have driven for it. You are not just paying them off!

Mr Kitschke: That is right. But that is a contribution to the Australian economy.

Senator DASTYARI: Sure. But you can be a business that contributes to the Australian economy and pays tax. Those things are not mutually exclusive; in fact, we encourage you to do both. No comment?

Mr Kitschke: I did not think it was a question.

Senator DASTYARI: Mr Kitschke, I want to ask you about the dispute you are currently having with the ATO. A lot was said at Senate estimates. The ATO put forward their case as to why they believed they were in the right. I understand they have made a ruling. You are challenging that ruling in the Federal Court?

Mr Kitschke: That is correct.

Senator DASTYARI: The ruling they have made relates to GST collection?

Mr Kitschke: That is correct.

Senator DASTYARI: You are disputing them on two bases, one of which is the interpretation of the law?

Mr Kitschke: That is correct.

Senator DASTYARI: Secondly, you would like to make a point about what you feel was an inappropriate consultation process?

Mr Kitschke: That is right.

Senator DASTYARI: I will give you the opportunity to do that now.

Mr Kitschke: Thank you very much. The first thing that we would like to put on record is that we believe that people who participate on our platform should be captured by the tax system like anyone else. I think it has been misreported that, in some way, there is an attempt by us to dodge tax or not have people pay tax. Participating in a ride sharing activity is no different than having someone come and mow your lawn on weekends. When you pay that person $50 you assume that they are collecting GST and that, if they reach the $75,000 threshold, they will remit and get an ABN and do all the other things that are required under the tax system. We do not think it is appropriate that the tax office has essentially applied a 1999 law to a brand-new business model that did not
envisage this type of activity and treats people who do ride sharing fundamentally differently than other participants in the tax system. It treats someone who wants to try ride sharing for one hour or two hours a week differently than someone who wants to set up a lawn mowing business or be a courier or be an independent contractor as a truck driver. Given the changing nature of the economy, we do not think these decisions should be dealt with by a regulator; these are decisions that government should look at. We dispute the interpretation that ride sharing is a taxi service. We believe it is not a taxi service. In fact, most recently, in the Australian Capital Territory, where we have a regulated outcome, the territory government has recognised that ride sharing is not a taxi service but something fundamentally different. So we dispute the tax office's ruling in that respect.

Senator, in relation to consultation—and I take your point in relation to being brave and taking on the Australian Taxation Office—

Senator DASTYARI: It was a playful comment. Chris Jordan is a great guy and, for the purposes of this inquiry, he has been incredible.

Mr Kitschke: We would not be expressing our concerns so strongly if we did not believe there was a basis for them, and we would not do so lightly. We lodged a series of freedom of information applications to determine the level of consultation that the Australian Taxation Office undertook with bodies other than us for the purposes of making this decision. That information revealed that the ATO essentially had a hierarchy of criteria. They listed the Australian Taxi Industry Association, state and territory governments and our financial advisers as primary stakeholders at the same level. Airbnb was listed as only a minor stakeholder despite the fact that they were part of this sharing economy guidance.

The Commissioner for Taxation, Mr Jordan, said at the estimates committee—I think in response to a question from you, senator, and also in response to a question from Senator Leyonhjelm—that the consultation that occurred with the Australian Taxi Industry Association, a body that is essentially lobbying to have Uber shut down, was essentially 'typical'. He described it as being typical, normal and justified because it was the same level of consultation that occurred with other industry organisations that were part of this sharing economy guidance note. He specifically mentioned the Australian Hotels Association. We sought freedom-of-information documentation about this to demonstrate that the commissioner had in fact undertaken that consultation. There was no evidence provided in a specific freedom-of-information application to show that the AHA was consulted in any way.

The consultation that was afforded to the Australian Taxi Industry Association was providing them with an opportunity to mark up in red a draft guidance note about the tax affairs of an industry and of a group of people that it does not represent. There was coordination with the Australian Taxi Industry Association's media and PR agency about the announcement which was not afforded to any other organisation. We think these are things that need to be investigated, and we think that the commissioner has not answered these questions properly and has not provided the information.

It has been misreported that we have said that Uber did not receive an appropriate level of consultation with the ATO. We have never said that. We consulted with the ATO and we had a lot of contact with the ATO. In fact, we worked with them for months and tried to be cooperative, and we offered many meaningful suggestions about how to appropriately capture the tax affairs of Uber partners. We do believe that the level of consultation afforded to the ATIA was not typical.

In relation to the decision, we are also concerned. The ATO, after it made its decision, wrote to us. The Deputy Commissioner of Taxation, Mr James O'Halloran, said that the ATO still believed that their decision was an uncertain area of the law. So we would question why they would make a decision if they were uncertain. He also said that this issue was not about revenue. If the ATO is doing something that is not about revenue I do not understand what its job is. Thirdly, he said that the issue was about levelling the playing field. Our view is that it should be about the appropriate application of the law. So we believe that there should be some level of independent oversight of the process and some independent oversight of the decision.

We think it is disappointing—once again—that a new business model, like ours, has to litigate in order to survive. For start-up businesses and entrepreneurs in this country, the only time and the first time that they have contact and connection with government agencies—and this is at both the state and federal level—is never with the policy makers or the forward thinkers; it is always with the policemen. It is always with those people that enforce the regulatory frameworks as they have been established for the past 10 or 20 years, and they try to shove you in a box that does not fit you. We do not think it is appropriate that businesses such as ours or any other start-up have to litigate just to survive. We think there needs to be a conversation at the federal government level which the federal government should lead.
Senator EDWARDS: Mr Kitschke, if I book a car on Uber and I go from my home town in Clare—if there were an Uber driver there—

Mr Kitschke: We hope that one day there will be.

Senator EDWARDS: If I go to Adelaide it might cost me $100, say. Where do I pay that $100? Where does that $100 land? It gets debited from my credit card, which is registered with you.

Mr Kitschke: That is right. As I described before, your contract is with the company in the Netherlands which operates the platform. That is the same for every rider around the world.

Senator EDWARDS: And the driver gets paid when?

Mr Kitschke: The driver usually gets paid every Monday.

Senator EDWARDS: And if it is $100, how much does he get?

Mr Kitschke: $75 at a minimum.

Senator EDWARDS: So that is repatriated to him. How do we collect the tax on the $75?

Mr Kitschke: The same way you would collect tax on any other small business or any independent operator. That individual is required to declare that income as part of their income tax.

Senator EDWARDS: Self-assessment.

Mr Kitschke: That is right.

Senator EDWARDS: So he would have to table his receipts—

Senator DI NATALE: He or she.

Senator EDWARDS: He or she—quite right, Senator Di Natale. Or, in the age of driverless cars, the driverless car will have to table its receipts. That is where you are heading. Uber is spending a lot of money on driverless cars. That would cut out the 75 per cent, wouldn't it?

Mr Kitschke: Probably not. Driverless care are a long way away, but I think the key point to make—

Senator EDWARDS: Well, they were driving down the freeways in Adelaide last weekend.

Mr Kitschke: I think they are hitting kangaroos in Adelaide.

Unidentified speaker: It was an inflatable kangaroo.

Mr Kitschke: A small mistake by the minister in Adelaide. The key point with that is that we are not a cash business. Unlike the incumbent industry, we are not a cash business. You cannot jump into one of our cars and slip someone $20 that is not declared.

Senator EDWARDS: If it is $75 and if they have registered as a company, they will have the ticket clipped for 30 per cent in this country. Who clips the ticket for the 25 per cent in the Netherlands?

Mr Kitschke: The Netherlands do.

Senator EDWARDS: But it was earned in Australia.

Mr Kitschke: The transaction has occurred between the driver and the rider with an overseas company, but the lion's share remains—

Senator EDWARDS: So 25 per cent of the fare earned goes off into the internet ether or the app ether or whatever and that revenue is never to be seen again by the Australian tax office, is it?

Mr Kitschke: That revenue is—

Senator EDWARDS: Is that $25 ever to be seen by the Australian tax office again?

Mr Kitschke: Indirectly, yes. Uber Australia is paid a fee by the Dutch entity to conduct activities in this jurisdiction.

Senator EDWARDS: How much of that $100?

Mr Kitschke: Costs plus 8.5 per cent.

Senator EDWARDS: What is your cost?

Mr Kitschke: I am not aware of the specific exact costs.

Senator EDWARDS: If it is a $100 fare, to keep it simple, what would your cost be that you would levy the Netherlands—

Mr Kitschke: The role of the organisation in Australia is to provide support activities for the business to the platform.
Senator EDWARDS: When you get paid, you get paid to run Uber Australia.

Mr Kitschke: I get paid to work for Uber Australia. I get paid to provide a specific function for Uber Australia.

Senator EDWARDS: You do not get paid in corn chips, so it generates revenue. It is paid by what company?

Mr Kitschke: Uber Australia does not generate revenue. The Dutch company generates revenue. The platform generates the revenue.

Senator EDWARDS: The mythical platform. The platform has got to be fair for the Australian division. You generate your money through the offshore based company. They pay you. They send money over every week to pay your wages.

Mr Kitschke: That is correct.

Senator EDWARDS: How much is it on a $100 fare?

Mr Kitschke: I am not aware of the specifics of that. I would have to get back to you. But, as I have said, what I can say is that Uber Australia—the entity that is incorporated in this country—pays tax in this country. We pay all appropriate taxes that we are required to.

Senator EDWARDS: Yadda yadda yadda.

Senator DI NATALE: What are those taxes?

Mr Kitschke: We pay corporation tax. We pay every other tax that is required of us.

Senator DI NATALE: Can you give us an outline?

Senator DASTYARI: But you are not making a profit?

Mr Kitschke: Yes, but Uber Australia—the entity—is provided a sum of money by the Dutch entity to provide support services in this jurisdiction, plus an additional amount. We are taxed on that. We pay corporation tax on that. We have done so for the last couple of years. You can check that with the Australian Taxation Office.

Senator DI NATALE: How much is that? How much have you paid?

Mr Kitschke: I do not have the specifics.

Senator EDWARDS: We have $25 that has gone off into the ether, right? You get repatriated. You say to your offshore parent company, 'It's cost us 100 grand this month to operate the business. Here are our expenses.' They say, 'Okay, here is a cheque for 100 grand. Keep going, boys. You are doing a great job.' Do they repatriate your costs? Where does the $25 which you pay tax on finish up in your operation?

Mr Kitschke: As I have advised you, Uber Australia is established to provide support functions for the Netherlands entity. We are provided a fee at cost to do that which is determined by external accountants. On top of that there is an additional 8.5 per cent. We pay tax on that 8.5 per cent. I cannot explain it any more—

Senator DASTYARI: So the Dutch parent company decides what your level of profitability is allowed to be in your Australian operation?

Mr Kitschke: That is right.

Senator DASTYARI: So that is determine in the Netherlands? So you get given an amount every month—

Mr Kitschke: Which is determine by external accountants.

Senator DASTYARI: Do you get that on a Monday as well, just out of interest?

Mr Kitschke: I get paid monthly. When do you get paid?

Senator DASTYARI: I get paid monthly as well.

Senator EDWARDS: On the last day of the month.

Senator DASTYARI: Last day of the month, but who is counting? And MyPay is all public by the way. Mr Kitschke, so the 25 per cent goes to the parent operation. Is that the same rate globally—everywhere? Is that a flat rate?

Mr Kitschke: It depends on the product. You would be aware we have ride share and Uber BLACK.

Senator DASTYARI: The answer is no.

Mr Kitschke: The average is around 25 per cent.

Senator DASTYARI: Let's say it is 25 per cent—we will use that figure. That goes to the Netherlands. The Dutch parent company separate to that on a separate basis determines how much money they are going to float to the Australian operation for the funding of your business. How many people work for Uber Australia?

Mr Kitschke: As I said, in the opening statement, I think by the end of this year we will have around 100.
Senator DASTYARI: That is not including drivers; that is separate. Uber Australia—so you have got about 100 people. They then fund that. You pay tax on that.

Mr Kitschke: That is correct.

Senator DASTYARI: You do not know how much tax you paid last year.

Mr Kitschke: No.

Senator DASTYARI: You came to a Senate corporate tax inquiry and did not work out how much tax you paid last year.

Mr Kitschke: I can find out the specifics for you and get back to you in a very short period of time.

Senator EDWARDS: It would be easy to suggest that the repatriation of the 25 per cent is manipulated on the way back to you guys in Uber Australia. You are repatriating expenses only plus 8½ per cent and you are keeping whatever the balance of the 25 per cent over there? Is that fair?

Mr Kitschke: As I said, the platform—the software—is based in the Netherlands. It needs to service 64 countries, and that is the reason why it is based there. It is the same for every other jurisdiction.

Senator DI NATALE: What is the company tax rate in the Netherlands?

Mr Kitschke: I am not aware of that.

Senator DI NATALE: Following on from Senator Dastyari, it is a corporate tax inquiry. These are pretty basic bits of information.

Mr Kitschke: I am more than happy to follow that up for you.

Senator EDWARDS: You can talk about the platform all day.

Senator DI NATALE: Do you see the public policy issue here?

Senator EDWARDS: Which we are all in agreement with.

Senator DI NATALE: A lot of people, I suspect, some—

Senator DASTYARI: Mr McDonagh is dying for us to ask what the tax rate is in Ireland.

Senator EDWARDS: It is 12 per cent. I even know that one.

Senator DI NATALE: The public policy problem is obvious here. I know that it is being tested at the moment about whether the service you provide is fundamentally different from the service provided by the taxi industry. You are in competition. You are offering what is broadly similar—and I know that will be tested. Obviously, the concern is that we have got one industry paying tax here in Australia and another that is not. The public policy problem is, if other businesses see the opportunities to do what you have done, we are going to start eroding our tax base. Do you acknowledge that that is an issue at least?

Mr Kitschke: That is an issue for governments, as I said before. We comply with all of the appropriate laws. It is not for me to make the judgement about whether or not that is appropriate. That is an issue for you as legislators.

Senator EDWARDS: You are the one arguing with Mr Jordan.

Mr Kitschke: I think that is a different issue. I think that the issue that we are arguing with Mr Jordan about is the application of the goods and services tax. I thought Senator Di Natale's question was about the issue around corporate taxation. Am I incorrect?

Senator DI NATALE: No. I am using corporate taxation but I think there are other taxes involved. I suppose the public policy question is that, as businesses like yours are emerging and providing a valuable service and are very popular, it presents a huge challenge to legislators. Because of the business model that you both have adopted, if that trend continues, it will lead to the erosion of the revenue base in Australia and, obviously, that has direct consequences for how we fund hospitals and schools and so on. I put to both of you: do you see that that is a challenge for legislators and that, in the end, without any concrete suggestions from either of you, it may be that you end up with a solution that is something both of you do not support. I am looking for options as to how you think a fairer way of leaving taxes from your industry and what that might look like. Perhaps Mr McDonagh, you have got off scot-free so far.

Mr McDonagh: I am very happy to answer any questions that are directed at me for sure. I think Airbnb provides a significant economic contribution to Australia and Australians—

Senator DI NATALE: Let's park the economics, because we have heard that from a number of contributors so far and we acknowledge it is an important economic contributor.
Senator EDWARDS: Hear! Hear!

Senator DI NATALE: But, as I think Senator Dastyari said, employing people and providing a source of economic activity is a good thing but it does not exclude the other side of that equation, which is paying tax. At least focus on that bit.

Mr McDonagh: One of the things that is at the core of Airbnb as a company is being a good corporate citizen. That applies in Australia and applies in the 191 countries all around the world that Airbnb has listings in, as well as in the 34,000 cities that we would like to make a positive contribution in. Just last week I was in Paris at the Airbnb Open, where we had 5,000 Airbnb hosts from all around the world who were in Paris to learn more about how they can make positive contributions to their community. That included a number of Australians. There is limited information that we are able to share with you all today, but the one thing I certainly can share with you as it relates to corporate tax in Australia is that Airbnb in Australia does make a profit. In 2014, our effective corporate tax rate was 37 per cent.

Senator DI NATALE: What was the profit?

Mr McDonagh: Our profit in Australia was derived from the marketing services that we provide. The costs that we incurred—

Senator DI NATALE: Sorry, can you explain that?

Mr McDonagh: Airbnb in Australia provides marketing and promotional services to Airbnb Ireland. That is the role that we play. We have a small team here and that is what we do.

Senator DI NATALE: What was the profit, and what was the taxable income?

Mr McDonagh: As we are a private company, I am unable to disclose the amount of profit that we reported in 2014, but I can say that our effective corporate tax rate was 37 per cent on that.

Senator DASTYARI: That would be in the ASIC lodgements, would it not? If I paid $37, I would be able to get that straight from ASIC.

Mr McDonagh: I am sorry?

Senator DASTYARI: I know you are saying you are choosing not to give that to us, but that would be part of what you lodge with ASIC?

Mr McDonagh: That is correct, yes.

Senator DASTYARI: So it is publicly available.

Mr McDonagh: It could be publicly available.

Senator DASTYARI: It is publicly available. You make ASIC lodgements, right?

Mr McDonagh: We do.

Senator McALLISTER: I wonder if you might provide it to the committee in confidence—in writing? We could just ask Mr McDonagh to provide it to the committee in writing in confidence, Chair.

Senator EDWARDS: Mr Kitschke, your company—I love the innovation, I love the ease of use, I love all that; do not get me wrong. But Senator Di Natale quite rightly talks about public policy. I think all this innovation is fantastic, but you create value by providing transport services to Australians, for Australians. It just so happens that your web-based administration is based in the Netherlands. With your parent or master—whatever you like to call it—why do you not collect all the money here and repatriate what they tell you you owe them?

Mr Kitschke: The contractual relationship is with the Netherlands company, and that is the company that creates the value. The value is created by the platform, by the software, that has to service 64 different countries and 354 markets. When the platform was created and when our organisational structure was created, it was not created with just Australia in mind. It was created with the need to service that diverse number of different markets and different countries.

Senator EDWARDS: So cost plus 8½ per cent—does that equal 25 per cent normally?

Mr Kitschke: I would have to dig into that further. I do not know the answer to that question.

Senator EDWARDS: If cost plus 8½ per cent does not equal the $25 in my $100 fare from Clare to Adelaide, what happens to the balance of that money?

Mr Kitschke: It resides with the entity that is providing the service. The entity that is providing the service is the Dutch entity.

Senator EDWARDS: Of my $25 that goes to the Netherlands, does any of that money ever come back to have tax paid on it? Just say we have enough to cover costs plus the 8½ per cent.
Mr Kitschke: As I said, we are funded by our parent organisation to provide support services for the platform for the Dutch entity in this jurisdiction.

ACTING CHAIR: What if the cost of providing that service is ten bucks and another 8½ per cent. Is that on the fare, or is that on the cost of service?

Mr Kitschke: No, it is on the cost of running the Australian business. The Netherlands entity pays the Australian business a fee that is determined by external accountants that is evaluated on what it costs to provide the specific support services that is the role of the Australian entity. We do not operate the platform.

ACTING CHAIR: Mr Jordan at the ATO does not have any transparency on that to know whether—

Mr Kitschke: I am sure Mr Jordan is acutely aware of our tax affairs.

ACTING CHAIR: No, he is not acutely aware of your operating costs, which is what the whole transfer pricing argument is all about—an IP and everything like that. I was in this room with Google, Microsoft and Apple talking about how much they charge their Australian operations for an iPad. So we do not have any transparency—and I presume you are the same Mr McDonagh—in how much your administration fee is or whether it happens to miraculously equal the $25 of a $100 fare. Is that right?

Mr Kitschke: Sorry, what was the question?

ACTING CHAIR: I am a bit confused myself! There is $75 which goes to the poor lady or man who drives the car.

Mr Kitschke: I would not say it is a poor lady.

ACTING CHAIR: Or to the person gainfully employed and being very entrepreneurial. How is that? Is that a better characterisation?

Mr Kitschke: That probably sounds better.

ACTING CHAIR: There is $25 which is domiciled, by virtue of the transaction, in Holland.

Mr Kitschke: It is paid to the organisation—to the business—that is actually providing the service, and the service is the platform. It is the software and the software is based in the Netherlands.

Senator DASTYARI: That is ridiculous. The idea that you cannot collect the money is ridiculous. What they are doing—and Labor et us be clear about what is going on here—

ACTING CHAIR: I thought I was going alright, but anyway—

Senator DASTYARI: The part of the business model we have—and we are in agreement here which frightens me as much as it frightens you. I appreciate you are here representing Uber Australia and you are here representing Airbnb Australia. They are both completely owned subsidiary companies of your parent organisation. These decisions get made at a parent level. I appreciate that. I understand and respect the fact that there is only so much you can disagree on and if you want to give your parent company a bash feel free to do so. You are protected by parliamentary privilege.

Let us be clear what the issue is—and I think Senator Edwards made this very clear: this is a transaction, for all intents and purposes, that has occurred in Australia by appearance. Yet, because of the way in which your platform is structured, it is a transaction that has occurred in your parent jurisdiction, both of which happen to be lower-tax jurisdictions. The idea, for the average Australian, that my transaction, when I decide that I am going to book an Uber car to pick me up from my house or that I am going to stay in a Western Sydney or South Western Sydney property or wherever, that has gone on between the driver and me or the owner of a property and me—and it is not a revelation because I think it is information that is already out there that surprises and concerns people and concerns us from a policy level—is with companies that are structured in such a way that the transactions are actually taking place in places around the world where these people have not visited and are unlikely to ever visit.

The concern from a policy level is what we can do or what we should do to make sure we are actually capturing those transactions in Australia and making sure that the tax is paid in Australia. I appreciate that Uber Netherlands and Airbnb Ireland are doing fantastically, and I wish the best of luck to them. We just want to make sure that we are getting our fair share of the tax dollars here. I think from what you are saying, the policy settings have to be changed for us to be able to do that.

ACTING CHAIR: So that we do not discriminate against the companies that operate in Australia and that pay tax on 100 per cent of their net profit.

Senator DI NATALE: I want to ask a little bit about the history of both organisations. Where did Uber start?
Mr Kitschke: We started in San Francisco. That was our first market. Then the business expanded to Europe and to the rest of the world.

Senator DI NATALE: And Airbnb?

Mr McDonagh: Airbnb was established in 2008 in San Francisco.

Senator DI NATALE: Doesn't it tell you something that you both happen to have landed in low-taxing jurisdictions?

Mr McDonagh: I would certainly be happy to share some of the background in relation to our use of Ireland as an international hub. We grew—

Senator DI NATALE: You are not going to tell me it is like Bermuda, which has a great safety record and all the rest of it?

Senator DASTYARI: Bermuda as a place for ship safety is something that goes against everything I was taught as a small child!

Senator DI NATALE: We are not suggesting that anything illegal is going on. But they are businesses that were generated in the US and they happen to have landed in jurisdictions that are low-taxing jurisdictions.

Mr McDonagh: I certainly appreciate that. Airbnb, as part of its global expansion that it undertook in 2012, found itself establishing offices all through Europe, and that was a really important part of Airbnb's expansion. We are on the record as saying that the biggest part of Airbnb's business is in Europe. We had offices and people spread all through Europe in different cities. We subsequently made changes to that in terms of the number of people and offices and where they are located.

Senator EDWARDS: You closed those offices?

Mr McDonagh: We closed some of those offices because one of our core values at Airbnb is to simplify. It just was not effective to have all of those offices and all of those people.

Senator EDWARDS: Why Ireland?

Mr McDonagh: I think Ireland is important for a number of reasons.

Senator EDWARDS: What is the No. 1 reason?

Mr McDonagh: I would say that the No. 1 reason we located ourselves in Ireland was for access to great talent.

Senator EDWARDS: Come on!

Mr McDonagh: It is generally the head of our global operations.

Senator DI NATALE: And the corporate tax rate in Ireland had nothing to do with it?

Mr McDonagh: We do not make any long-term decisions for the business based on tax rates.

Senator EDWARDS: What is the tax rate in Ireland?

Mr McDonagh: I think you set out what the tax rate was earlier. I am here to answer questions as they relate to Airbnb in Australia.

Senator DI NATALE: I am not saying there is anything illegal or wrong about it. It is just a reality here, and I would just love to hear someone name it. Mr Kitschke, would you like to take the opportunity to tell me why you settled on the Netherlands?

Mr Kitschke: As I said, our business started in San Francisco, and the steps that we took next were to go to Europe and the rest of the world. The Netherlands was chosen as a base because it has a highly skilled workforce and it was a place that businesses could—

Senator EDWARDS: Good beaches!

Mr Kitschke: launch effectively to the rest of the world. Similarly we make decisions based on the need to service six continents, 64 countries and 354 cities. If people in this room think that we have deliberately constructed our entire corporate structure with just Australia in mind, I think that is a little bit naive.

Senator EDWARDS: Nobody said that, and—

Senator DI NATALE: No-one is suggesting that.

Senator EDWARDS: to frame it that way is being a little bit precious.

Senator DI NATALE: No-one is suggesting that. Obviously there are advantages to being in Ireland over Bermuda. But Ireland has a low corporate tax rate, and I am assuming the Netherlands has a low corporate tax
rate too. I am looking forward to getting that information from the witnesses. But it would help us in this discussion if you were a little bit more frank about some of the reasons behind the way the organisation has developed, grown and landed in these low-tax jurisdictions. It is providing a very good service. No-one is arguing against that. But the question again comes back to whether we are capturing the appropriate level of revenue from the activities that are undertaken here in Australia by both of your operations.

Senator EDWARDS: Who set the rate of 25 per cent for your company as the clip the ticket for the Netherlands?

Mr Kitschke: The Netherlands company that runs the platform.

Senator EDWARDS: Based on what?

Mr Kitschke: Based on decisions about how much it costs to invest in the IP and maintain the technology. It is obviously a fairly sophisticated piece of technology that a fair amount of investment has gone into.

Senator EDWARDS: Mr Kitschke, I will pose the question on notice to you: are you a transport company, or are you a software company?

Mr Kitschke: We are a tech company.

CHAIR: You are not a ride-sharing company?

Mr Kitschke: Our partners provide the ride-sharing services. We, as in the Uber group of companies—

CHAIR: It has nothing to do with—

Mr Kitschke: provide the platform.

Senator EDWARDS: So, when I book an Uber, I am booking a tech company?

Mr Kitschke: No, you are using a piece of technology, and that is what we provide.

Senator EDWARDS: What?

Mr Kitschke: The technology.

Senator EDWARDS: To do what?

Mr Kitschke: To connect you with the person who wants to take you for a lift.

Senator EDWARDS: Mr McDonagh, what are you? Are you a software company, or are you a company which provides accommodation services like every other hotel based here in Australia?

Mr McDonagh: Airbnb are certainly a technology company. For the use of that technology and that platform we charge various fees, which we have not touched on yet, but I think it is important in terms of the context.

Senator EDWARDS: How much do you charge?

Mr McDonagh: It is free to list on Airbnb, and we charge a three per cent fee to hosts. So, if you were to go and book a $100 room or a home for $100—

Senator EDWARDS: It is three bucks to you.

Mr McDonagh: in Surry Hills, the host will receive $97 from that $100 booking.

Senator BACK: They would only pay tax if they got to the $18,000-a-year tax threshold?

Mr McDonagh: We do not look at individuals in terms of whether they are lodging tax returns and so on, but we certainly encourage all of our hosts in Australia and around the world to declare the income that they make from Airbnb, and we provide them with a reminder which relates to the amount of money that they have earned in any year to help facilitate that.

Senator BACK: Do you encourage them to have a stated GST component on the tax invoice that goes to the guest?

Mr McDonagh: The ATO does not require Airbnb hosts in Australia to charge GST.

Senator BACK: So, unlike Uber, there is no dispute between you and the tax office about the definition or the nature of the host? There is no automatic scenario as you have explained to us, Mr Kitschke, and that is that, in the case of Uber, a person is expected to have an ABN; they are expected to produce a quarterly BAS whether or not they get anywhere near a taxable income—

Mr Kitschke: That is correct.

Senator BACK: the tax-free threshold. Is that correct?

CHAIR: I am going to have to ask people to start winding up because we have—
Senator EDWARDS: I am just winding up. No worries.

Mr Kitschke: Can I just say in relation to Senator Back's comment and following from Sam's comment that similarly we have complied with requests from the Australian Taxation Office to provide their information, so in fact notices of the ATO. Our platform has provided that information out to all of our partners to advise them of the ATO's ruling, of their tax requirements and the position of the Australian Taxation Office, and we have been extremely cooperative in that.

Senator EDWARDS: You told me that you are a tech company. And you are a tech company. But your opening page on your app says what, Mr Kitschke? What does that say? You should be familiar with that, even though you probably cannot see it from there.

Mr Kitschke: I cannot see it from there. I will have to open it up on my phone. I have a conversion.

Senator EDWARDS: So what does it say?

Mr Kitschke: It says, 'Uber, everyone's private driver.'

Senator EDWARDS: Of tech?

Mr Kitschke: No, as I said, our platform facilitates the connection between someone who wants a ride—

Senator EDWARDS: So what are you, a tech company or a transport company?

Mr Kitschke: I have answered that question a number of times. We are a tech company. We do not own the vehicles. We do not operate the vehicles.

Senator EDWARDS: It repatriates 25 per cent of its revenue to an offshore destination, and then it goes all murky about what your costs are, and none of the money ever comes back apart from your wages and your overheads for your office.

Mr Kitschke: And the corporate tax we pay in Australia.

Senator EDWARDS: Which is whatever they decide to pay on whatever that 25 per cent is and repatriate—

CHAIR: Plus 8.5 per cent.

Mr Kitschke: That is correct. My understanding is that the ATO uses 7.5 per cent as a safe harbour, so we are actually above what is required in that particular respect and above OECD guidelines.

Senator EDWARDS: I am going to finish up, Chair. I love the technology. I think it is great. We just have to try to keep pace.

CHAIR: I understand that Senator McAllister has a couple of questions before we finish up.

Senator McALLISTER: Yes. I just want to ask you, Mr Kitschke, about your submission. You conclude your written submission with a section that is headed 'Tax Policy Generally'. I am not really sure what point you are trying to make there. Perhaps you could elaborate for us?

Mr Kitschke: I think that the key point we are trying to make today is that we are a global business that operates in many jurisdictions, and I made the point in my opening statement that, if there are changes to be made, they are changes that need to be made at a global level as opposed to a domestic level.

Senator McALLISTER: Are you saying that the work of this committee is unimportant?

Mr Kitschke: No, not at all. I am saying it is very important work, but it needs to form part of a global activity, which I understand is being pursued through the OECD at the moment.

Senator McALLISTER: In that part of the submission, you say:

… if the laws being suggested here in Australia were imposed on Australian companies operating abroad—for example in China—the taxes paid by those companies overseas would rise and the tax paid locally would fall. It seems to me that that is a little misleading because in fact China is not a tax haven. It is not a low-tax country. This committee's interest really is about people artificially constructing arrangements so that business activity appears to occur in a low-tax jurisdiction. I am just wondering what point you really are trying to make here by using the example of China.

Mr Kitschke: Again, I think it was the indication of the fact that this is a global issue—that, if global companies that are established elsewhere are going to be taxed in different ways and the rules are going to be changed, that will also affect the way that Australian companies which provide services or undertake activities in other jurisdictions are dealt with as well.
Senator McALLISTER: I think you will find that here on this committee there is agreement that, wherever economic activity occurs, that is the jurisdiction in which it ought to be taxed, but we might just have to agree to disagree on this approach. Thank you.

CHAIR: Thank you very much, gentlemen, for coming before us today.
PEACH, Ms Kris, Chair and Chief Executive Officer, Australian Accounting Standards Board

THOMSON, Mr Angus, Research Director, Australian Accounting Standards Board

[14:27]

CHAIR: Welcome. I would like to thank you for appearing before us today. I invite you to make a brief opening statement should you wish to do so.

Ms Peach: Thank you, Chair and senators. The AASB sets financial reporting standards for all sectors of the Australian economy, and that is both public and private sectors. Our objective is for financial statements to meet user needs by providing relevant information to make sound investment and accountability decisions.

For-profit corporates that are publicly accountable—and that is listed entities, typically—are required to comply with Australian accounting standards identical to the international standards. The AASB may sometimes add extra requirements, but we generally cannot take away from the international standards.

There will be other for-profit entities that classify themselves as reporting entities that also prepare general-purpose financial statements, but they only have to comply with the same recognition and measurement requirements and will have reduced disclosure requirements. Those are what we call tier 2 entities.

There may also be other for-profit corporates that do not classify themselves as reporting entities. Those entities will prepare special-purpose financial reports, effectively with limited requirements.

Reporting entities are those which have users that cannot command the information that they want. The relevance to this inquiry is that general-purpose financial reports will provide information regarding corporate tax and related party transactions, whereas special-purpose reports need not provide this information.

The AASB have conducted our own research indicating that the reporting entity concept, while sound in principle, is actually not working well in practice. We are currently working with regulators and policymakers, including federal Treasury, to develop objective criteria to determine which entities should be required to prepare and lodge financial statements and what those financial reporting requirements should be. Those criteria should ensure that only entities that should be preparing general purpose reports are identified as those that should publicly lodge.

If these proposals came about, that would mean that special purpose financial statements should not be lodged on public record at all. But to achieve this we are going to need to work with the overall compliance burden. We expect that this will need reform from government and reevaluation of the appropriate criteria and thresholds for lodging publicly. Because these would be a fundamental change to the Australian financial reporting framework, we believe significant consultation will be required. We have already progressed research to underpin this consultation and will be anticipating assisting Treasury with a consultation paper early next year.

CHAIR: Thank you. Can I just ask you to clarify a point you made in your opening statement. You said that the concept of 'reporting entity' is not working in practice. Can you just elaborate on what you mean by that, please?

Ms Peach: We have some research conducted on entities reporting from 2008 to 2011 which indicates that in practice people are finding it difficult to apply the concepts. We found that something like 80 per cent of large proprietary companies that are lodging publicly or thereabouts are actually using special purpose reports.

Senator DI NATALE: Eighty per cent?

Ms Peach: Yes.

Senator DI NATALE: To interrogate that a bit further, I am still not sure that means. You are saying that this is some sort of compliance burden? What is going on here?

Ms Peach: What we are saying is that there is an accounting concept which is a reporting entity concept. It is quite subjective in how it is applied. What that means is that 80 per cent of the large proprietary companies that are lodging publicly or thereabouts are actually using special purpose reports.

Senator DI NATALE: Yes, I understand that, but I do not understand what is going on. Why are we seeing that shift? In your view, is it a compliance burden issue? I think that was the language you used at some point. Or are we talking about a trend for other reasons? What do you think is going on?

Ms Peach: I am not sure there has been a change in trend. Over the 2008 to 2011 period that was looked at, there was really only a small number of entities that changed from general purpose to special purpose or the other way.
Senator DI NATALE: But for 2013-14, there were 20 big companies that have been tabled as having changed from general purpose to special purpose accounts. Are you aware of those figures?

Ms Peach: To be clear, are you referring to the Michael West report?

Senator DI NATALE: I am referring to a document here. I am looking for a footnote. It may have come from the Michael West article, but there are 20 companies here. The period covers mostly 2013, 2014 and 2015. There are companies like Adidas Australia, BMW, Bupa, Fuji, JBS, Johnson & Johnson, Merck Sharp & Dohme, News Australia Holdings, Novartis, Oracle, Pfizer, Procter & Gamble, Bosch, Roche, Sanofi, Aventis, Serco, Smith & Nephew and Unilever. In 2013, 2014 or 2015, all of them moved from general purpose to special purpose accounts.

Ms Peach: My understanding is that the actual year that they changed from general purpose to special purpose was not 2013-14 but sometime earlier.

Senator DI NATALE: Okay. I have the year in which that appears to have occurred. Perhaps you can take that on notice and provide us with a breakdown.

Ms Peach: Yes.

Senator DI NATALE: Are you suggesting there is no change in trend, then? Is that something that you feel has for some reason been changing over time, or are you saying that is just the ebb and flow of this stuff as far as you are concerned?

Ms Peach: All we can say is, because we do not have data for 2011 to 2014—we are actually in the process of trying to obtain that information, so it is quite complicated to get the background data of that to make good assessments—certainly, from the years that we did have good data we have not seen that there was a huge trend in changes either way, from general purpose to special purpose or back the other way. So we suspect there may have been some significant changes back when we first moved to IFRS, which was in 2005, but really it would just be speculation.

CHAIR: I want to understand. Your board has looked at this trend. Is it reviewing the standards that apply to make them less subjective? Is that how I should interpret what you are saying?

Ms Peach: What we are actually trying to do is work with the policy makers, because we think the reporting entity concept should be applied by regulators to work out what some objective criteria are. Hopefully, that will simplify the whole process. So it should be quite simple: if you meet certain criteria, you know exactly what form of reporting you have to do. That is not the case in Australia.

CHAIR: Because, at the moment, if you are saying 80 per cent of large public companies are now moving to the special purpose, that is—

Ms Peach: It is proprietary companies. All listed companies are doing full general purpose reports.

CHAIR: That means that the general public has less information on the financial arrangements of global companies, in particular, in Australia.

Ms Peach: Yes, and the overall compliance burden is that, to shift, you would have to very carefully look at whether those current criteria thresholds are really the right ones. Are there really users for those reports? That is something that we believe needs a lot more consultation to get a proper outcome.

Senator DI NATALE: What do you think the objective criteria need to be?

Ms Peach: At the moment, the criteria that you use for the small-large test are based on assets, revenue and number of employees.

Senator DI NATALE: Yes, but these are big companies. We are talking big companies here who have gone to special purpose.

Ms Peach: Yes. Where the research is taking us at the moment is that there could well be some extra criteria around total liability levels. What you are trying to work out is: who are the external users of this financial information? Who really needs this information in the first place?

Senator DI NATALE: Why would you be asking that? Surely there is a bigger question about the benefit of having that information on the public record. We are having a committee here because we are discussing it. There are a bunch of people who are witnesses to this inquiry who want access to that information. Why is that the question?

Ms Peach: At what level do you draw those thresholds? At the moment, the small-large test—

Senator DI NATALE: None of the companies I mentioned are small companies. They are big companies.
**Ms Peach:** They are, but what we are saying is that we think the reporting thresholds should tie in with general purpose financial reporting so that, whatever those thresholds are, it should be clear that you should do general purpose reports. At the moment, it is not.

**Senator DI NATALE:** So you are saying those companies should not be doing special purpose.

**Ms Peach:** No, I am not saying that at all.

**Senator DI NATALE:** That is the inference from what you said. I am trying to understand why we have a bunch of big companies—and this is my understanding of it; please correct me if I am wrong—who have said to you, 'We don't want to have to report this information in detail. We'd rather minimise what we disclose publicly. We're a massive company.' I am sure this report is being documented internally all the time, so it is not like it is extra work for them. What do they have do? Copy in you guys, I suppose—cc you in on an email. My understanding is that they have just said, 'We don't want to have to do this,' and that is pretty much where it ends.

**Ms Peach:** Yes, and to change that, what we are suggesting is you would need to reset the threshold at which you are actually asking them to report in the first place. Small companies do not report anything at the moment. Those thresholds are $25 million in assets.

**Senator DI NATALE:** Yes. But, again, we are talking about these big companies. Resetting the threshold will make no difference.

**Ms Peach:** No, but it would be clearer, if you have the appropriate threshold, that those entities should be doing general purpose reports, because they are very large and they are significant.

**Senator DI NATALE:** So you are saying that you feel that the threshold should be changed and these companies should be reporting through general purpose accounts.

**Ms Peach:** I think that would certainly be an outcome. There would be much clearer and objective criteria so that there would be no doubt about what you have to do.

**CHAIR:** Isn't there a public policy benefit as well in terms of changing it and making it more objective?

**Ms Peach:** Yes.

**Senator DI NATALE:** At the moment, I can say, 'I don't want to have to disclose this information. I'm not going to,' and that is the end of it.

**Ms Peach:** It is not quite that simple.

**Senator DI NATALE:** What do I have to do as a big company?

**Ms Peach:** You would have to demonstrate that you thought that you were not a reporting entity and your auditors would have to agree with you.

**Senator DI NATALE:** What role do you have in that? Let me be clear about it: I self-assess whether I need to do this stuff and then no-one checks it; it is just what happens.

**Ms Peach:** No, that is not the case. The AASB's role in this is that we set the standards, so we have no enforcement powers. We are not the regulator.

**Senator DI NATALE:** I understand that. Who makes the judgement about whether someone can move from general purpose to special purpose?

**Ms Peach:** The directors of the companies will make that decision in the first instance.

**Senator DI NATALE:** The companies themselves? Do you reckon there is a problem with that?

**Ms Peach:** That is why I am proposing that we need to have more objective criteria.

**Senator DI NATALE:** At this stage, you have not said anything that really changes my understanding of it, which is: 'I don't want to have to disclose this information. I'm a big, profitable company. I'm just not going to do it.'

**Ms Peach:** The directors would have to make that decision and their auditors would have to, basically, agree with that.

**Senator DI NATALE:** Do you know if there are any cases where an auditor has disagreed with the decision made by a company?

**Ms Peach:** I think that would be something you would need to ask the audit firms.

**Senator DI NATALE:** Are you aware of any instances where that may have occurred?

**Ms Peach:** Anecdotally, yes, there would be instances where audit firms would certainly have challenged that assessment, and there would also have been instances where the regulator, ASIC, would have challenged those.
CHAIR: I take it you have seen this article by Mr West about a week or so ago.

Ms Peach: Yes.

CHAIR: In the case of the 20 or so companies, we seem to have a mixture of different auditors that have signed off. There does not seem to be any particular one of the big four, so it seems to be an issue that is going across the profession.

Ms Peach: Yes, that would be consistent with the research that we had conducted as well.

CHAIR: I am interested in hearing more about your research. Without seeking to pre-empt it, can you tell us a bit more about your research and where you think that is heading?

Mr Thomson: I think one of the main points of the research was that we clearly knew that some entities were doing general purpose and some were doing special purpose. One of the points of the research was to try and examine the common characteristics of the entities that are doing general purpose versus those doing special purpose and whether there is some clear divide. Does it look like the bigger guys are doing general purpose and the smaller ones, for example, are doing special purpose? The evidence was that, no, it is very mixed. There appeared to be very inconsistent application of the concept, which has led us to the view that the concept probably does not belong in the hands of the preparers and that, instead, clearer thresholds need to be set and anybody who does lodge has to do general purpose.

CHAIR: Doesn't it assist the work of the ATO to have more information available in the public domain?

Ms Peach: It would certainly go to that end, yes.

CHAIR: Is it possible under our Australian accounting standards for an Australian subsidiary to undertake financial transactions with its overseas parent which will see it paying inflated prices for services rendered, such as marketing or loan financing?

Ms Peach: There are some transactions that an entity would need to record at fair value regardless of what the actual transaction cost was in the financial instruments space, but, yes, there can well be transactions that would be conducted as non-arms-length transactions. The accounting standards in that instance normally require—if you are doing general purpose reports—some disclosure of what those transactions would be, but, if you are preparing consolidated financial statements, because all of those transactions get eliminated, there is actually no detail about those related party transactions.

CHAIR: Is that something you are looking at as well?

Ms Peach: It is certainly something we can look at. To date, there has not been a push for us to do that, but certainly, having being cognisant of some of the conversations around these types of inquiries, we understand that there could well be a push for that information.

Senator DASTYARI: My understanding of this is nowhere as deep as yours, so my apologies if this sounds like a silly question. From the evidence you were giving before, you are saying the different is really on whether or not anyone else would really use that. You have to justify that no-one else has a use for it, right? But I look at the list. It takes someone like Bupa that has tens of thousands of policyholders—correct? I do not get how you can justify an organisation like that. No-one else has a use for the accounts but them. It does not pass the sniff test.

CHAIR: That is why there is a review going on now.

Senator DASTYARI: It just does not pass the sniff test.

Ms Peach: Without wanting to comment on individual circumstances—

Senator DASTYARI: Go right ahead. We do it all the time.

Ms Peach: I am not sure that is my place. Some of the arguments are around 'We are a wholly owned subsidiary', or 'We just have one or two shareholders'. So sometimes it is quite difficult. People will make arguments that very few people actually access their financial statements on ASIC registers. There is a whole range of different reasons that people argue that they are not reporting entities.

Senator DASTYARI: Is it that 'people do not actually download the report' is a reason that is given? That is like arguing that we do not need to have company AGMs because I do not go to them. That does not mean I do not want the right to be able to go to them.

Ms Peach: That is certainly the view that we would have, and that is certainly why the reporting entity concept was developed in the first place.

Senator DI NATALE: Are you seeing any companies decide to move from special purpose to general purpose accounts?
**Ms Peach:** We really do not have the data. We have in the last couple of years actually introduced the second tier of general purpose reporting, the reduced disclosure regime. We were actually hoping that that would move more entities from special purpose into general purpose.

**Senator DI NATALE:** So that was introduced specifically because people were moving across and you felt that maybe there might be some middle ground?

**Ms Peach:** No. We introduced it to try and help people make that decision, but we do not have the data at this point to know whether that was effective. Anecdotal evidence would be that it was not very successful.

**Mr Thomson:** In the context of the research report, there was one entity that moved from special to general in the 2009-11 period, but that was in a sample of a population.

**Senator DI NATALE:** Can I ask more generally—there is clearly another function to this. I understand the notion of reporting entities and so on, but part of the reason this enquiry is happening is that transparency serves its own function. There is a function associated with disclosure that goes beyond simply individuals who want to access that information. Do you accept that argument—that ensuring that these bigger organisations have requirements that mean they have to move to more general purpose accounts, that there is greater financial disclosure—that that serves a public benefit?

**Ms Peach:** We certainly think that appropriate information is definitely serving a public interest. We do need to work through with the policymakers to make sure we all get to where the right criteria are, so you do get that right boundary, and you are not asking everybody to be doing general purpose reports in the first instance.

**Senator DI NATALE:** You have already said you think that there is a threshold that relates the size of the company, so I will accept that.

**Ms Peach:** That is one aspect.

**Senator DI NATALE:** So what are the other things?

**Ms Peach:** I think there could be other things as well.

**Senator DI NATALE:** Such as?

**Ms Peach:** I do think that economic significance is important, but it is very hard to actually determine what economic significance is, and that is why there needs to be some good consultation around that.

**Senator DI NATALE:** Aren't you concerned that you are just giving more wriggle room to these companies—to make arguments that are very subjective?

**Ms Peach:** Where we need to get to is that the end criteria are very objective.

**Senator DI NATALE:** How do you develop an indicator that is objective around economic significance?

**Ms Peach:** That is actually what we are working through in doing some benchmarking with overseas countries as well. It does seem that assets, liabilities and revenue are some of the key criteria that you would be expecting to see in that mix. Whether that is the current thresholds that we have or not is, I think, open for debate.

**CHAIR:** I have been reminded that Senator Xenophon is on the line. Senator Xenophon, do you have any questions?

**Senator XENOPHON:** Yes, I do; I am happy to wait my turn, Chair.

**Senator DI NATALE:** I have one more, and then we are done. The Senate is obviously very engaged in this issue at the moment. It is a live issue before the Senate, and we passed legislation only in the last sitting week that required consolidated general purpose reports to be provided and to stop that issue around special purpose reporting. Is it an accurate reflection of your views that having mandated public disclosure would be a step in the right direction? Thresholds are open to interpretation. I think we have settled on $1 billion. It is pretty safe to say you are not a small company if that is the sort of turnover you are talking about. Is it safe to assume your views reflect that?

**Ms Peach:** We welcome the spotlight being turned on the general purpose, special purpose issue. We would like to see it done as part of the broader framework project so that there are no unintended consequences. Broadly, we would be happy with the thrust of where it is heading, yes.

**Senator XENOPHON:** I want to ask some questions about the financial reporting practices of online betting companies operating in Australia. I am talking about companies such as William Hill Australia Holdings; Tom Waterhouse's brand, branded under Tom Waterhouse; Paddy Power Australia, which is Sportsbet; Hillside, which is bet365; LB Australia Holdings, Ladbrokes, which have been audited respectively by Deloitte, KPMG, Pitcher Partners and PwC. Are you able to shed some light as to why Ladbrokes prepares general purpose financial
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reports but the other three companies—that is, Sportsbet, William Hill and bet365—do not? They only prepare special purpose financial reports. Does that seem to you to be a strangely divergent accounting practice?

**Ms Peach:** I could not comment on those particular instances. I have no personal knowledge of what their particular circumstances are.

**Senator XENOPHON:** I put to you in broad policy terms, because I am trying to understand, given the line of questioning of Senator Di Natale, Senator Dastyari and others, that all these companies hold money on account for many thousands of customers. As a general principle, leaving aside the identities of those companies, do you consider that the many thousands of customers of these online betting agencies have a legitimate need for general purpose financial reports so they can assess the financial capacity of these companies to, using their vernacular, hand the cash back?

**Ms Peach:** Again, I am not cognisant of how these particular entities are set up. What I can say is that, under the definition of public accountability, which requires you to do tier 1 general purpose financial reporting, one of the criteria is if you are holding moneys in a fiduciary capacity. The typical examples there are banks and credit unions, which would certainly get caught.

**Senator XENOPHON:** Wouldn't these companies be holding money in a fiduciary capacity? You have many thousands of their customers having deposits, having money in their accounts. Isn't that a fiduciary capacity? In general principles, isn't that fiduciary?

**Ms Peach:** Again, without knowing the specific circumstances of how they are set up and how they operate, they may well—

**Senator XENOPHON:** Let me assist you on this. You are a customer. You have $1,000 in the account of one of these companies, whether it is Tom Waterhouse, bet 365, Ladbrokes or Sportsbet. It is your money that you deposit. Isn't that a fiduciary capacity?

**Ms Peach:** It depends whether you are entitled to get that money back or whether that is your prepayment for the service that you—

**Senator XENOPHON:** No, it is money that you deposit that you can take out.

**Ms Peach:** In that case, yes, my expectation would be that you would be meeting the definition of publicly accountable.

**Senator XENOPHON:** So, on that basis—and I am looking through this methodically—the fact that Ladbrokes does prepare general financial reports but the others do not appears to be a divergent practice, given that on the face of it there is a fiduciary capacity.

**Ms Peach:** That certainly sounds like there would be something to consider there, yes.

**Senator XENOPHON:** My final question: do you have any idea why this does not appear to be happening at the moment or why this is not occurring for those other three major companies?

**Ms Peach:** Sorry, no; I could not offer any information on that.

**Senator XENOPHON:** A follow-up question: given you are the CEO of the Australian Accounting Standards Board, is this something that you will look into further?

**Ms Peach:** I am very happy to have a conversation with the regulator to identify that you have some concerns. As I said, I think the framework project that we are undertaking will also be starting to address some of these issues as well.

**Senator XENOPHON:** Thank you.

**CHAIR:** Given the time, I think we will have to move on from here. Thank you very much, Ms Peach and Mr Thomson.
LINKE, Mr David, National Managing Partner, Tax and Legal, KPMG
TODD, Mr Brett, National Managing Partner, Tax, Deloitte Touche Tohmatsu
WARDELL-JOHNSON, Mr Grant, Partner in Charge, Australian Tax Centre, KPMG
WATKINS, Mr David, Partner Tax Insights and Policy, Deloitte Touche Tohmatsu

[14:56]

CHAIR: Welcome. I invite you to make a brief opening statement should you wish to do so. Do not feel obliged.

Mr Todd: We have an opening statement which we have kept very brief. We are pleased to be here today to assist the inquiry in the important process of improving the quality and integrity of the Australian tax system. We acknowledge the concerns in the community about the level of tax paid by multinational companies in Australia, and we note that there has been significant progress made globally and locally in modernising the international tax rules since we last appeared in April.

Deloitte's global purpose is to make an impact that matters with our clients, our people and our communities. We have contributed our views on good policy options to underpin the Australian tax reform debate, and we have actively participated in the BEPS process. Deloitte, along with other major accounting firms, is a key intermediary in the tax system. We have a critical role in the efficient and effective functioning of the tax system. In recognition of this role and as registered tax agents, we operate in a legislatively regulated environment under the Tax Agent Services Act and professional accounting standards, supported by extensive internal regulation.

Australia has a tax system that is robust, well administered and has a high degree of voluntary compliance. That said, there will always be more to do to make sure the tax system keeps pace with business practices and community expectations. We are very proud of the way in which Deloitte works with our clients, the role we play as key intermediaries in the tax system and the important part we play in the tax policy debate.

Mr Linke: Thank you Mr Chair and committee members, and thank you for the opportunity to make this opening statement. There is a clear sense in the community that the tax system needs reform. This sense is driven by many factors, including governments facing budget deficits, a community desire to fund new social programs, a need for reform to spur economic growth and a desire for greater tax transparency. All groups have a role to play in addressing these issues—business, the regulators, professional services firms, civil society, the community and the media. That said, the debate needs to be measured and supported by evidence.

Since my colleagues last appeared before this committee to give evidence, significant progress has been made on international tax issues and transparency. The OECD released its 15 point BEPS action plan recently, and the government has responded, or is in the process of responding. At KPMG, we are proud of our contribution to the tax reform debate. Our submission on the tax white paper process contained more than 60 recommendations for reform. In addition, we were integral to the holding of the recent National Reform Summit. We operate with strong internal governance and risk management frameworks, having regard to one of the most stringent regulatory regimes in the world that governs tax advice. While we believe that the rule of law is paramount, any advice we give needs to be given in the context of a client's commercial objectives, reputation and broader stakeholder interests. We continue to be available to assist the committee in its deliberations.

CHAIR: Thank you very much. Perhaps I could start with yourself. We have been talking about this issue of companies swapping from general purpose to special purpose financial statements. Senator Dastyari mentioned the company Bupa Australia, which I understand is one of your clients.

Mr Linke: Yes.

CHAIR: For the year 31 December 2014, that company changed from general purpose to special purpose. I am interested in the rationale for that and the advice that was given or sought in that respect to the extent that you can tell us about that.

Mr Linke: As you appreciate, I lead the tax practice and I am not an audit or a regulatory partner in our practice. As the previous witness indicated, there are a range of matters that are taken into account that are governed by ASIC and are matters going to the capital markets. As I understood that evidence, the proposition is that it is a compliance really matter in information required for the capital markets, so I cannot really comment on Bupa's particular situation. What I can say is that for the purposes of this inquiry, I see the tax office as having sufficient tools at its disposal to ensure that it could review the affairs of any particular companies regardless of whether they lodged general purpose or special purpose financial statements. As I said, I cannot really comment on a particular client's circumstances.
CHAIR: Would you agree that it makes the ATO's job somewhat more difficult if we are dealing with these special purpose accounts as opposed to the general purpose accounts?

Mr Linke: As I think was said earlier, there is certain information contained in general purpose financial statements which is not in special purpose financial statements, so in that sense it may make the job easier. I think my proposition is that the ATO has sufficient tools at its disposal to garner the information that it requires to make an appropriate assessment of the tax position of companies.

Senator DI NATALE: It is not just about the ATO though, is it? Do you see the public benefit in increasing financial disclosure?

Mr Linke: Absolutely. There is a clear public benefit for increasing transparency. It was part of the OECD BEPS action plan. I think the board of tax is currently looking at a voluntary disclosure regime and how that might look. From early next month, or from mid next month, there will be a range of tax disclosures put up for a range of companies in publicly available information. It is part of the transparency mix, but as the previous witness indicated, it is really a matter which is being reviewed by, as I understand it, the Accounting Standards Board and ASIC, and there is a question of what the compliance burden is from a capital markets and reporting perspective.

Senator DI NATALE: They did not indicate that that was an issue.

CHAIR: Perhaps I could put the same question to Deloitte in respect of Procter and Gamble and Serco Australia—there are recent decisions to change there. Could you shed some light on that for us?

Mr Todd: We will answer the question very similarly to the way KPMG answered the question. Again, similarly to David, I run the Australian tax practice, and the question is more for our audit practice. I would make one comment that is different to what David said. As an auditor, we have strict independence obligations. Auditors will not go and recommend something. It would be something that the client would ask about, and the auditors would sign off, similar to what they do with other things to do with accounts et cetera. That would be the only difference to the way David answered the question.

CHAIR: From what we have heard from the standards board, it is a fairly subjective standard to move from one set of accounts to the other form of accounts. There does not appear to be too many considerations as far as public policy is concerned. A request is made and, so long as you have a firm of auditors that is prepared to agree, then it is going to happen. That is a problem, isn't it? Would you agree that is a problem?

Mr Linke: I agree that there is public policy considerations—absolutely. It is part of the transparency debate. But, as I understood the evidence just given, that is part of the ongoing review or the current review that is being conducted in that area.

CHAIR: I understand you are saying that you are not in a position as tax lawyers to provide too much advice in this area, but would you agree that this trend towards special purpose accounts indicates a falling level of accountability and disclosure by multinational companies operating in Australia?

Mr Wardell-Johnson: I thought Kris Peach said earlier that there was no established trend one way or the other, based on her evidence. So I am not sure that there is an established trend.

CHAIR: I would have to disagree. I think she indicated that 80 per cent of large companies now have moved to special purpose.

Mr Wardell-Johnson: Okay. I stand to be corrected. I thought she said that 80 per cent were special purpose but that she could not establish a trend one way or the other over the period to 2013.

Senator DASTYARI: I would call 80 per cent of firms structured one way a pretty overwhelming majority. Wouldn't you?

Mr Wardell-Johnson: Eighty per cent of large propriety companies. That is fact.

Senator DASTYARI: It is 80 per cent—four-fifths, eight out of 10, sixteen out of 20.

Mr Wardell-Johnson: I was just challenging Senator Ketter, but I thought that Ms Peach said that there was no trend going on one way or the other. That is what I thought.

Senator DI NATALE: She was not sure. She said in her evidence that they are doing a review.

Mr Wardell-Johnson: Correct. To answer your question more broadly, the lens through which special purpose versus general purpose accounts has previously been seen is purely in terms of capital markets. It has not been seen through a tax lens. You are raising the tax lens through that now, and I am sure it does raise public accountability questions. It raises compliance costs. It raises competitiveness and questions on disclosure, so those questions are out there. Whether the commissioner is benefited significantly by general purposes accounts is
an open question, because the commissioner has so many other tools at his disposal to get that information. There are probably six things that are happening out there. There is the website of the commissioner. As David mentioned, there is the voluntary disclosure that is occurring. The commissioner, as you have heard previously, is embracing this effective tax borne analysis. There is an ISAPS program, which looks at international structuring and profit shifting. In the high-net-worth individual space there is a program where very senior ATO officers are going out and talking to taxpayers in that space. There is country-by-country reporting. So there are those tools. The commissioner says, 'Do I need an extra tool in relation to general purpose accounts?' You can ask him, but some of those other tools are more effective in terms of disclosure and working out what is happening for risk assessment purposes.

CHAIR: On that issue of the trend that we are talking about, the media seems to have identified a bit of a trend. Are you able to tell us of any companies which have gone the other way—from special purpose across to general purposes?

Mr Wardell-Johnson: No. It is beyond my information and it is outside my domain. I am, like David, a tax person.

CHAIR: Mr Todd?

Mr Todd: I would not be aware of any. There is nothing to my knowledge.

Senator DASTYARI: Could you perhaps take on notice whether or not there are any clients of yours—not naming the firm—who have gone the other way? This would not including SERCO, because SERCO is the only one we know of.

Mr Linke: We are happy to take it on notice.

Senator DASTYARI: I have just a slightly related topic, and thank you again for coming back to our inquiry. I know you had so much fun the first time that you guys were really keen to come back to our inquiry!

At the moment, as you know, there is a debate going on in the Senate regarding the legislative bill that is before the Senate at the moment. It got passed by the Senate. There is a parliamentary debate going on at the moment, which I am not going to get you guys involved in, which is regarding amendments, but largely there seems to be on the face of it a fair bit of bipartisan support for the overall legislation. There is a debate about amendments at the moment, which we will leave to the politicians. Have companies come to you—without naming them; I understand commercial confidence—about restructuring and how they arrange themselves and their own affairs in light of the passing of that legislation? Have you been providing that kind of advice to companies, clients of yours?

Mr Linke: I think you are talking about the multinational anti-avoidance law bill? That is not yet law, but the companies that we have been discussing that bill with are acting on the basis that that bill will become law from 1 January. Those companies are more interested in having an open discussion with the ATO. That is not to suggest that all those companies fall foul of that particular bill; they may be in it, or they may not be in it. They are the conversations that we are having with our clients at the current time.

Senator DASTYARI: It sounds like there are companies out there who are looking at restructuring themselves in light of the possible passage of that bill?

Mr Linke: No. I think what they are more interested in is going to the ATO and having an open discussion about whether or not their particular international structures are seen to fall foul of that bill, and then working through a process of do they need to change their business structures into this country, or do they need to change their pricing?

Senator DASTYARI: Are they doing that? Are they sitting down with the ATO?

Mr Linke: The bill is not yet law, and therefore the ATO cannot necessarily give a great deal of policy guidance at the moment, because the matter is not yet law. Companies are thinking hard about it. They are preparing for it, and they are starting to think about having those discussions with the ATO, absolutely.

Senator DASTYARI: Mr Linke, I am going to nail you on this one, because I want to get this right. You are saying that at this point in time you have not been providing advice, or none of your clients have sought your advice, about possibly restructuring in light of this bill?

Mr Linke: No. A number of our clients are thinking about what the world will look like after 1 January.

Senator DASTYARI: Sure, but that was not the question. The question was whether or not you are providing advice to clients about potentially restructuring themselves. Let's be honest, there are two scenarios: the bill passes or the bill doesn't. The more likely scenario based on public commentary would be this is a bill that is likely to pass—that is a parliamentary debate—and your clients would be aware of that, you would be aware of...
that. My question more specifically was: without naming the clients, have you been providing advice to clients about potentially restructuring themselves, and are they looking at that? I understand that as part of that, they would also want to sit down with the ATO—

Mr Linke: Absolutely.

Senator DASTYARI: but prior to doing that, surely they would be talking to you about it and you would be giving them advice about how you feel they fit within that legislation, wouldn't you?

Mr Linke: We would be giving them advice on the application of that law, absolutely.

Senator DASTYARI: So you are. Is that the same with you, Mr Todd?

Mr Todd: Yes, we are speaking to our clients about the implications if the law passes. And, David, I will pass over to you.

Mr Watkins: Those discussions are including consideration of restructuring business models.

Senator DASTYARI: No-one is going to restructure until they know where they fall foul or not, because there are costs associated with restructuring.

Mr Wardell-Johnson: Things are changing. Whilst the MAAL deals with redrawing a line on whether you are selling into Australia or selling within Australia, so do changes in Action 7, in the OECD model. The line in relation to where you have a taxable presence is changing not just in terms of the MAAL, but more broadly. Indeed, on 12 November, Australia signed a treaty with Germany that redraws that line. The world is thinking about restructuring in relation to that line—

Senator DASTYARI: Great time to be in your business.

Mr Wardell-Johnson: That is part of our business; to advise in relation to that, and to let people know how the world is changing in that space.

CHAIR: Senator Di Natale.

Senator DI NATALE: Just to go back to that point about reporting entities—let's go to that issue. How would you provide advice to a client about whether they are a reporting entity? What are the parameters you use?

Mr Watkins: I think the answer has to be the same answer as earlier. Across the table, we are all tax partners. There are 600 partners—or thereabouts—within our firm. There will be many people there who understand the accounting and regulatory regime better than any of us. I am afraid that is just not an area I can comment on.

Mr Linke: I am not an expert on the AASB, the accounting standards or the ASIC regulations that deal with that particular issue. I cannot answer that question.

Senator DI NATALE: I will let you off the hook on that. Do you think it is a reasonable proposition? Your argument is that the ATO can get access to this information if they want to, but that is not necessarily the primary purpose of these disclosure arrangements. Part of the reason this whole thing is happening is that a little more transparency around the arrangements that these firms engage in is, in and of itself, a driver that changes behaviour. Do you agree with that proposition?

Mr Wardell-Johnson: I think you are on the money in terms of the business community recognising that we need greater transparency. I think that is obvious to build a level of trust with the community. In terms of the initiatives of having the Board of Taxation looking at a voluntary disclosure regime, I think that is a really good way to go in respect of that.

Senator DI NATALE: I notice 'voluntary' is a word that you guys love. Let me ask you about 'mandatory'.

Mr Wardell-Johnson: I know that recommendation 3 of your interim report says, 'Let's move that to mandatory.' I actually think it should be a phase where you look at the voluntary. If the voluntary does not work and if you do not have too many volunteers it is appropriate that you move to a mandatory regime. But give the voluntary regime a bit of a go, and—in my view—you might end up with a much better result. Two of your major Australian companies have some really interesting disclosures in relation to their worldwide taxation by country. What happens in a voluntary space can be particularly useful.

Senator DI NATALE: What happens in a mandatory space can be even more useful.

Mr Wardell-Johnson: If you take the commissioner's website, that is a mandatory space—

Senator DI NATALE: We are talking about specifically looking at general purpose accounts. Let's look at the legislation that is before the Senate around the threshold of $1 billion for mandatory general purpose accounts. What is your view of that?

Mr Wardell-Johnson: Sorry, the legislation before the Senate?
Senator DI NATALE: There is an amendment to the legislation we have just been discussing.

Mr Wardell-Johnson: I thought that went back to the House and was rejected by the House.

Senator DI NATALE: Yes. It is coming back to the Senate. So I am asking about your view of the amendment.

Mr Wardell-Johnson: As I understand it, there is lots of complexity in relation to the terminology of that amendment—

Senator DI NATALE: No, this is pretty straightforward. Let me give you the principle: at $1 billion you have to have a general purpose account. You cannot continue this nonsense of special purpose accounts if you are a huge company with a $1 billion turnover.

Mr Wardell-Johnson: I will put to you that there is a whole balancing act with regard to many different things.

Senator DI NATALE: Tell me what the balancing act involves there.

Mr Wardell-Johnson: Who is going to use that information? In terms of—

Senator DI NATALE: Let me give you an example. We have Glencore—one of your clients, I understand. Is that right? They are Deloitte's client.

Mr Watkins: Glencore is audited by Deloitte. That is correct.

Senator DI NATALE: You have a company like Glencore, which has $34 billion in assets and is filing special purpose accounts on the basis that no-one will be a user of their financial reports—going to your point. This is a company that is on the verge of going broke here in Australia. It has huge mining liabilities and there are people who will lose their jobs. Do you think they should be able to access detailed financial information about this company?

Mr Wardell-Johnson: That is a question well beyond tax. I have no idea about—

Senator DI NATALE: No, this is about general purpose accounts. This goes very directly to disclosure around general purpose versus special purpose accounts. It goes directly to that question.

Mr Wardell-Johnson: If this inquiry is looking at a tax lens in relation to this, then you have to ask yourself—

Senator DI NATALE: It is on multinational tax avoidance. Of course it is looking through that lens.

Mr Wardell-Johnson: Senator, obviously I am having difficulty answering that question because as soon as I start a sentence I do not get past the first clause. As I was saying, there is a balancing act in relation to this. If you are asking in a corporate tax inquiry, 'What's the tax lens around this division between special purpose accounts and general purpose accounts?' the answer is, 'What are you using that information for?' The commissioner is the person in charge or the body in charge of making sure that a correct amount of tax is payable. If you are asking a broader question—does the community have an interest in this disclosure—that is outside that. That is a different question.

Senator DI NATALE: Outside it, according to who?

Mr Wardell-Johnson: It is outside the question of whether the correct amount of tax is being paid.

Senator DI NATALE: No. You keep bringing it back to the commissioner, and that the commissioner has access to the information they need to have access to, but there is another function of ensuring that that disclosure occurs—and that is that simply the act of disclosure drives changes in behaviour. A company like Glencore is able to file for special purpose accounts and, given some of the circumstances I have just described around that company, surely mandating that that company discloses detailed financial information is in the public interest.

Mr Wardell-Johnson: That is broader question of tax. I wish you well in actually balancing those deliberations and I am not disagreeing with where you are going. I am just answering this in terms of the tax lens and what the commissioner needs in order to make sure that the correct appropriate amount of tax is being paid.

Senator DI NATALE: Isn't the assumption—and this goes to the heart of it—that you see that the only mechanism through which to deal with the problem we have got in front of us is through the commissioner, or is the primary response. What I am putting to you is that, in fact, the disclosures in and of themselves are a response. We know from international experience that increasing disclosure and mandating disclosure drives changes in behaviour within some of those companies.

Mr Wardell-Johnson: To misquote John Lennon: give voluntary disclosure a chance.
Senator DI NATALE: I am trying to work out the relationship with the John Lennon thing. I do not know that it would—

Senator DASTYARI: That is a misunderstanding of John Lennon on so many levels. I am a fan of a lot of what Mr Wardell-Johnson has said over the years and I have seen a lot of his papers, but I have got to say that that has to go down as one of the great ones.

Mr Wardell-Johnson: The worst, is it?

Senator McALLISTER: His estate will be contacting you.

Senator DI NATALE: To come back to that point, what do you see as the problem with mandatory disclosure? Why is voluntary disclosure a necessary pathway on the step towards mandating disclosure?

Mr Wardell-Johnson: Because I actually think that if you have got business together with the board of tax, thinking about how can we do this—

Senator DI NATALE: You are starting to sound like John Lennon now.

Mr Wardell-Johnson: I will stop but—how do we do this in a way that we can reveal information in a cost-efficient way that is not subject to misreporting or misunderstanding et cetera, and then I think you will actually get a better result. I genuinely think that, if you do look at major miners and what they have disclosed, it is a really first-class act in terms of disclosing and working out the tax they pay throughout the world, and give that process a chance. I think that if you mandate certain things, you will not necessarily get it right.

Mr Linke: You had a good example in evidence this morning, and that was the Caltex transparency report. That is a voluntary act by Caltex to disclose their tax payments in this country and get on the front foot and be upfront with all their stakeholders about the tax they pay and their engagement in their community.

Mr Watkins: Another observation on that: I think with the experience in the UK, certainly amongst leading companies where there is no regime, mandatory or voluntary, but the experience year in year out is that more and more companies are making more and more tax disclosures. There is no regime. That is really market driven. I think that there is a mechanism relying on voluntary disclosure that is proving in the UK—

Senator DASTYARI: I just remember the evidence that you guys gave at the start of the year when we started this process and this inquiry, which is slightly different to what you are saying now—not in a kind of malicious 'you gave wrong information' sense. I do recall that there are those of us who have been arguing quite passionately about greater disclosure and transparency, and part of what you are talking about is companies responding to community pressure. Companies have decided that they want to come out with more information, because there is a thirst for knowledge out there in large part because there are community campaigns, civil society campaigns, unions, and whoever else. There is a thirst for this information, and some companies have decided they want to come out with more information.

At the same time, because that information is not available, they try and do their own calculations and come out with their own information. The big four accounting firms all gave the same evidence, which was, and I am paraphrasing here, 'Be very careful, because when you guys try and do calculations you get it wrong. You are making mistakes about looking at taxable income versus revenue and you are getting these figures wrong all the time. Do not do it. You are making mistakes and you are giving the wrong information.' On the one hand, you are saying to us, 'This is incredibly successful. The community campaign works and it results in the companies wanting to come forward with information and that is the best way of doing it.' On the other hand, whenever we start pushing for more information and try to come out with figures, you turn around and say, 'You guys don't understand what you're doing; you're giving misinformation.' It cannot be both, Mr Linke!

Mr Linke: I disagree with that characterisation. I am the first to acknowledge that there needs to be a common understanding of effective tax rates and how you calculate these things to avoid a lot of the misunderstanding that arose at the beginning of the debate. I am hoping that, as part of the broader tax review and other reviews that are commissioned, we come to some understanding on that, because that is critical. But, ultimately, that understanding does not necessarily lead you to mandatory disclosure—I think that is all we are saying—at least not immediately.

I agree with Senator Di Natale: transparency and greater transparency will change behaviours. It is critical. It was a key part of the OECD BEPS conclusions and the more transparency we have, in a sense, the better. But, ultimately, as my colleague said, there is some great stuff being done by corporate Australia, already, in this space and there is the community pressure there to do it. I think if there is a common understanding, everyone will have greater information. In truth, the information that will go on the ATO's website is only, really, three numbers in a

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few weeks time. That is better than nothing and I am not arguing with that, but, in truth, there is more to it than just three numbers.

Mr Todd: I think we all agree that increased transparency is important. We all agree with that. The one thing I would add, though, is—we heard from the AASB and the overriding factor that kept coming through was consult. We want to make sure there are no unintended consequences with that and that is where I would go as well.

Senator McALLISTER: While we are on this question about mandatory versus voluntary, the final proposition I would put to you is that on many other questions, whether it is women in leadership, environmental performance, health and safety, the regulatory experience or the policy experience in trying to get change within industry, you are utterly dependent on a group of leaders in the industry who make a decision to take a voluntarily step forward and raise the bar. But, ultimately, their competitive position is undermined by those laggards within the sector who continue to do cheaper things, which deliver poorer outcomes—whatever you are trying to measure or produce, in terms of a policy shift. I am surprised that you, in this case, would argue for something that is a special case, that this problem, uniquely, should rely on leaders only and as regulators we should not concern ourselves with the laggards.

Mr Linke: As we answered earlier, the distinction between general purpose and special purpose is really a capital markets issue; it is not a tax issue. The clients I talk to—

Senator McALLISTER: It is more on the transparency question, generally.

Mr Linke: Absolutely. But, in terms of the clients I talk to and the boards I talk to, we are constantly discussing transparency. I think there are a number of significant leaders in the business community, in this country, who are moving in that direction, and they are moving rapidly in that direction.

Senator DI NATALE: I still do not understand what you mean when you talk about it as a capital markets issue—sorry to interrupt. Can you just expand on that point? What do you mean by that?

Mr Linke: As I said, I am not an accounting or ASIC expert—

Senator DI NATALE: But you made a comment, so I just—

Mr Linke: Essentially, that distinction between general purpose and special purpose depends upon the users of those reports, and that was the distinction the earlier witness was talking about.

Mr Wardell-Johnson: If you have large proprietary companies or non-resident companies, you do not have a small player that is powerless, in relation to getting that information—that is an investor in that country. That was the lens on which that special-purpose general-purpose delineation was previously drawn. Whether that is an appropriate lens now is subject to you guys to deliberate on.

Senator DI NATALE: I still do not understand what you are getting at, and I am not being difficult here. When you say it is a capital markets question, what does that mean?

Mr Wardell-Johnson: If you are a publicly listed company, you have got small investors who need more information to make decisions in relation to their investment. If the company is actually owned by private individuals or a nonresident, you do not have that space.

Senator DI NATALE: But we are talking about publicly listed companies who are applying for special-purpose accounts.

Mr Todd: I think there are two parts to this. There is the transparency piece, which you guys are talking about. As I said, the profession welcomes added transparency. The other piece is really whether companies in Australia are complying with the law and whether the ATO has sufficient information to determine that. We would say, yes, the ATO does have sufficient information.

Senator DI NATALE: Sure. We are getting to the transparency issue I am interested in. We keep hearing about capital markets. We had the 20 companies—

Mr Linke: I have not looked at that list in a couple of days, but none of those companies, I recall, are listed. They are all foreign owned.

Senator DI NATALE: I have not actually gone through the list—

Mr Linke: They are not publicly listed here.

Mr Watkins: But those companies would be lodging the equivalent of general-purpose accounts in their home jurisdiction, whether that be the UK, US or wherever.

Senator DI NATALE: Okay, now I understand your point. I do not agree with it but I understand it.
Mr Wardell-Johnson: I go back to Senator Dastyari’s and Senator McAllister’s questions. I think, Senator Dastyari, that you expressed dismay at the different ways in which companies were calculating effective tax rates in the submissions that were lodged to this committee. I thought you had a pretty good point in relation to that. Hopefully, the Board of Taxation in its voluntary disclosure process will say: ‘That is pretty unacceptable, actually. We need a consistent way of measuring ETR that makes sense to the general community.’ It is that process that is under discussion. In fact, I think there is a consultation paper on that due to be released next week. I think it is a really important process to go through to get a conclusion in relation to a regime for voluntary disclosure and then to see how corporates respond to that. If there are laggards, I suspect Mr West and others will point those out. There will be reputation issues surrounding that which will be of importance to them.

Senator DASTYARI: You are coming at it from a different perspective from us. I am not sure I necessarily agree with it, but I want to clarify that we have got it right. Your perspective is that we should attempt a voluntary code and, if that fails, go back to the drawing board.

Mr Wardell-Johnson: Yes. I think your recommendation 3 in your interim report must be a sword of Damocles over those involved.

Senator DASTYARI: You're doing very well! You are agreeing with us, you read our report—this is a great start!

Mr Wardell-Johnson: But it must act as an impetus to get this voluntary thing right; otherwise, you guys are going to go for mandatory.

Senator DI NATALE: I go to the question of publicly listed multinational companies. I still do not get the rationale for why we say an Australian ASX listed company needs to do this and yet an international—

Mr Linke: I am not an expert in the area, but I think the proposition is that for an ASX listed company you have mum-and-dad investors who need all that detail and information. If I am a subsidiary of a foreign company with significant financial guarantees and financial support from offshore then there are no mums and dads, because they are all in Germany, Brazil or wherever they are. Fundamentally, therefore, the users of these accounts are a much more limited group.

Senator DI NATALE: What about the employees?

Mr Linke: I think the employees are often comfortable in the knowledge that there is a significant foreign parent with significant financial firepower that will ensure the salary and wages are paid.

Senator DI NATALE: But let's look at Glencore. That could just—bang—cutting them off and that is done.

Mr Wardell-Johnson: It is not a tax lens, but you could well be right in terms of employees and other stakeholders. I was never disagreeing with that; I was just saying that from a tax lens there is this. But you are right to ask those other questions.

Senator DASTYARI: So you are saying it is a public policy question, not a tax question.

Mr Wardell-Johnson: Yes.

CHAIR: Thank you very much for appearing before us.

Proceedings suspended from 15:34 to 15:48
CHAIR: I now welcome representatives from PricewaterhouseCoopers and from EY. I thank you for appearing before the committee today and I invite you to make a brief opening statement should you wish to do so.

Mr McLeod: I will lead off on behalf of Ernst & Young. EY is one of the big four firms. As was the case for my colleagues from our competitor firms whom you heard from earlier, we are proud of the role that EY plays in the administration and functioning of the Australian tax system. The complexity and volume of tax transactions does mean that the tax system relies on firms like ours to make that system function. Taxpayers need help to comply in the filing of their returns and the handling of complex matters, so a tax system without advisers is kind of no tax system at all.

Ernst & Young is subject to a range of constraints that we balance. Those are legal constraints that the courts as well as the parliament impose on us, ethical constraints that come not only from our own firm but from the professional bodies that we are part of, and commercial constraints in terms of reputation, not to speak of the contractual obligation that we have to represent our clients in their dealings with the tax authority.

The Australian tax system is a sophisticated, mature and robust tax system. There is a very strong compliance mentality and culture in this country, and we think it is important to recognise that the bulk of taxpayers comply and that, in the design of tax policy and rules, we are targeted to where the problems are as opposed to applying solutions to problems that do not exist or to parts of the system where those problems do not exist.

So we as a firm are certainly very active in public policy through our professional body. We have a tradition and culture of making strong contributions to public policy debate. The public interest is very strong in the mind of firms such as ours, and I think we give testimony to that through the experiences that you will have seen through firms like ours being involved with the professional bodies and also directly in assisting with the legislative development and policy development.

With those words of introduction, we are certainly open to receiving any questions that you may wish to pose to us.

Mr Seymour: I would also like to say a couple of words. First of all, PwC is very happy to have the opportunity to appear before the committee once again in what we believe is a critical debate and community conversation for Australia and, indeed, the world community around tax reform and international tax reform. PwC has been very strong and clear for a number of years now in its message that international tax reform is needed and it is overdue, and we are strong advocates for the OECD process and, indeed, the Australian parliamentary process for considering how it deals with tax reform.

We do not believe the challenge is in relation to the question of 'what'—that is, that tax reform is needed. The challenge is in relation to the question of 'how': what is the actual path for tax reform? In considering the path for tax reform, you need to look at the problems you are trying to solve. You can get very down into detail in a tax reform debate, but very broadly we think there are two challenges with the international tax system today.

The first is that it is just out of date, and we have heard great examples over the last 10 hours or so as to why it is out of date. The concepts of international taxation have not kept up with modern business today, where value is created in IT platforms or intangible assets, global capital is mobile, and business is digitalising quickly. The rules simply have not kept up, and they need to be amended and changed.

The second problem we have to acknowledge is that the international tax system is a mere collective of domestic tax systems. There is no such thing as an international tax code; it is actually just how domestic codes come together. Governments have a sovereign right when they are elected to government to design a tax system that suits the best needs of that country, and in exercising that sovereign right governments compete for global business. Therefore, we need a tax system that is modernised, but we also need a tax system which is competitive, and to ignore that second point is not dealing with the reality of the problems we face today.

So, if you accept that the two challenges we face are modernisation and competition, you then go to what types of changes we need to consider in our reform process. Broadly, you can categorise those into two categories as well: they are called the carrot and the stick. We need more integrity measures and transparency measures in our tax system. We are advocates for that. We support that, and we have lots of recommendations coming forward for
more stick measures in the Australian taxation system. We have an anti-avoidance rule which is class leading in
the world. We have arguably one of the best, most sophisticated and most well-run tax offices in the world. We
are introducing a multinational anti-avoidance rule which will come in on 1 January, which will be world leading
et cetera.

Senator DASTYARI: Hopefully.

Mr Seymour: Hopefully. So we have no shortage of reforms on the table around the stick. What concerns
PwC is that very little conversation is being had at this committee and outside this committee about whether our
tax system is internationally competitive. One of the core problems we have to acknowledge and solve is that we
live in a competitive world and governments are competing for our business. If we do not have a competitive tax
system, we will only deal with half the challenge. The response to the reform needs to be balanced between the
carrot and the stick. I think that is a critical point for this committee to consider.

Finally, PwC—like Ernst & Young and like, I think, all of the private sector—is very proud of its contribution
to the tax debate in this country and globally. As the globe's largest tax practice and Australia's largest tax
practice, PwC see it not only as something that we want to do; we actually see it as our obligation to contribute to
the debate. That means contributing to all sides of politics openly on the debate. It means contributing to
bureaucrats and community groups, whether they be civil society groups or unions, on the debate to get a better
system. I think we have amazing people in our business. We have a lot to offer and we are very proud of that, and
we look forward to continuing that today.

CHAIR: Thank you very much. I feel obliged to put the same question to each of your two firms that I put to
your counterparts earlier today. In the case of Ernst & Young, I ask you, Mr McLeod: News Australia Holdings
moved from the general purpose to the special purpose financial statements from last year, as I understand it. Can
you explain to us why that has happened, in the context of transparency, and why that has been allowed to
happen?

Mr McLeod: Unfortunately, perhaps like my colleagues who appeared earlier, I do not have the specific
information to be able to answer your question. In a similar vein to the comments made by our counterparts, we
are tax experts—I am a tax expert—and that aspect of the firm's dealings with clients comes through the audit and
the assurance practice. It is not likely that I can take you much further on that move and the reasons behind it,
other than to make some general observations about that kind of decision-making advice being very compliance
oriented. As my colleagues mentioned earlier, corporations makes those decisions and they are subject to audit,
and the auditor essentially has an objective compliance focus so that, so long as the matter is in accordance with
law and practice, those arrangements are generally approved by auditors.

CHAIR: Before I go to PwC, I note a report that EY has issued: Building a better working world.

Mr McLeod: Yes.

CHAIR: I note you have done a survey of your clients and found that just 21 per cent agreed or strongly
agreed with the statement: 'We believe that voluntarily publishing to the public the amount of taxes we pay where
we operate is a prudent step to take.' So we do have a bit of an issue, don't we? We were talking earlier about voluntary versus mandatory. We seem to have evidence here that there is a need for a fairly firm approach to be taken. Would you agree?

Mr McLeod: Yes. I think the issue is for the parliament to decide what minimum level the regulatory
requirement should be. Obviously, in the setting of that, there is a weighing of the public interest for the particular
objective being sought. These requirements do impose costs on the private sector and on the corporations. Those
costs are a social cost. There is a balancing act. It is not true to, essentially, observe or say that extraction of
further information from corporations will, in fact, lead to the same level of cost. There is a trade-off. I am not
suggesting that the trade-off does not lead to further disclosure, but I think it needs to be acknowledged that those
impose a certain additional regulatory burden on businesses that already complain about the extent of regulatory
burden that they carry.

CHAIR: We are talking about transparency, so there is a public interest in—

Mr Pratt: I think Mr Young's position is like our colleagues in the other firms. We have the same position,
and that is: we are very much in favour of transparency. The question is not that; the question is: how and by
whom—and there are threshold questions around the 'by whom'. Lots of people will have different views about
the sort of discussion that was held in the previous session about what the criteria are and so forth. That should be
looked at, and clear criteria should be set, but then the other question is, 'What is disclosed?' In my mind, at least,
the discussion about general purpose and special purpose accounts is not even focusing on the right questions.
General purpose accounts are not designed to explain a firm's tax positions in any clear way. They are not set up
for that purpose. That is not to say they do not have more information about tax than special purpose ones do—that is true—but they are not designed for, nor are they the best practice around disclosure when it comes to trying to explain to either the tax commissioner or the general public, if it is Senator Di Natale's point, to change behaviour. I personally feel that it is not obvious at all that causing all companies to have general purpose would solve a problem. It could create a further problem by providing a whole lot of information that does not explain things, and raises a lot more questions.

**CHAIR:** You are saying there would be additional information in excess of what is available in the general purpose?

**Mr Pratt:** Yes. Therefore, the question is, 'Does that take you anywhere?' I am not sure it does. That is not an argument against the transparency; it is an argument that that is probably not where you go to get the transparency.

**CHAIR:** I will give PwC a chance to respond to my standard question. In your case we have Avon Products, Johnson & Johnson and a couple of others swapped across too. Do you have some expertise in the auditing standards area?

**Mr Seymour:** Like my colleagues, I am a tax expert, but what I would say is that what we heard from AASB is that the rules with which you apply the test of, 'Are you or are you not a reporting entity?' are subjective, based on a bunch of criteria of who is going to use those accounts. If a foreign multinational coming into Australia has a subsidiary in Australia, or has multiples subsidiaries in Australia, you apply that test to those multiple subsidiaries. The first thing I would say is—and I am not sure whether the conversation missed the point before—those foreign multinationals that come in already file the equivalent of general purpose accounts in their home jurisdiction, and any of us can go onto the internet and download any of those companies' accounts today. All that information is already filed in their home country, like how our listed companies in Australia file general purpose accounts, but they do not then redo that in every jurisdiction in which they work around the world. So, first of all, I question how much extra information will be put out there, because a lot of it is already in the accounts that anyone can access off the internet.

The second point goes to a key broader point around transparency. The Australian policymakers have a critical decision to make, and that is, 'How far do you want to go with transparency?' Why do I say that? You will hear from the tax office later on. The tax office largely have—or, I suspect, totally have—access to all of that information already. For example, one of the things that is filed in general purpose financial statements is related party transactions. You already file that in a tax return you give to the commissioner. The point here is not necessarily giving the commissioner extra information; it may be giving the public extra information.

I then go back to a comment I made in my opening, which is that we need to balance the level of carrot versus stick in our reform process. There is no doubt that giving more public disclosure of information—which largely already exists, but redoing it—will give more information for people to use, to name and shame et cetera, but at what point do we say, 'Naming and shaming big business, which invests a lot of money here, is good for our country,' versus 'It becomes bad for our country and impacts our business operating regime?' That is a critical question, and I think you have to weigh that up as a public policy in light of the critical question which we seem to miss in these conversations—'How competitive is our Australian tax system and everything that goes with it?')—we need to be competitive to attract global capital here.

**CHAIR:** Yes, but I take issue with you, Mr Seymour, that we are here to name and shame. We would prefer companies to do the right thing in the first instance. Transparency is a vehicle for ensuring that does not happen in the first place, so there would be nothing to shame people about.

**Senator EDWARDS:** Really? I thought that was the guy who has just walked in and that it is his job to get those people in—not our job.

**Senator DASTYARI:** I think it is more than one person's job, Senator.

**Mr Seymour:** It is an interesting policy question, though. Certainly, PWC's view is that we do have a well resourced, highly talented revenue authority. When we talk to our clients around the world—

**Senator DASTYARI:** You guys are being a lot nicer about the ATO since the commissioner walked in. Did you know what they were saying about you, commissioner, when you were not in the room?

**Mr Seymour:** The not so nice thing the commissioner would like to hear is that most of our clients also think it is one of the most aggressive tax regimes in the world in its compliance approach towards them. We have a very active and more resourced tax regime to govern our tax laws. If we make a broad policy decision as a nation that we want the general public and the media to govern our tax laws as well, through media naming and shaming, that is a decision that we can take, but that will have an impact and it will drive behaviour. No-one can argue that it
will drive behaviour—I totally agree with that—but it also may drive business away and you have to balance that up in weighing up where we want to go as a nation. We are facing that situation today.

CHAIR: The slightly disturbing message I hear, from what you say, is that nation-states are in competition with each other for the attention of global businesses and it is almost a race to the bottom for poor countries to make themselves more amenable to big business so that they will receive investment. I do not think that is what you are trying to say to me, but that is the message that I am hearing.

Mr Seymour: Let me rephrase a little bit. Let me give you the UK as a good example. The UK has very stringent rules that they have introduced. They have introduced a diverted profits tax, which is not a million miles away in concept from what we are doing with our MAAL. They have transparency measures and they have reporting measures, so they have a lot of the stick type measures in the reform but they also have a very competitive tax regime. They have a corporate tax rate that is 20 per cent going to 18 per cent. Their corporate tax take as a percentage of their total funding mix, in the UK, is at four per cent. We are at 22 per cent. You have to look at the entire package of that. What the UK has proven through the recovery of their economy is that it is not necessarily a race to the bottom, because their economy is doing very nicely, thank you, via getting that balance right.

The only point I am making is we need to balance both. I am certainly not saying do not have extra transparency. We see things like country-by-country reporting as absolutely critical, to give revenue authorities access to greater information to do their job. What we are saying is: let us have a balanced debate with that and a competitive regime, because that competition is real. It always has been and it always will be.

Mr McLeod: I would just add an aspect that is, essentially, the emphasis that all of the firms have placed on the need to get cooperative solutions in the international arena. The reality is that countries do divide the international tax base between them. You can use the word competition but you can also use the word cooperation in the way in which that tax base is divided between the relevant nations that engage in cross-border transactions.

That is the emphasis that we would give at Ernst & Young. BEPS, for example—OECD action—is about not a race to the bottom, it is about creating a set of rules at the international level that fairly allocate that tax base and do it in an objective manner. In the process it tries to minimise loopholes that might emerge for corporations. It is not too far beyond the truth to say that there is a degree of taxation avoidance and gaming that is engaged in, directly, by countries. That may relate to your observation about a race to the bottom, but it is just a fact of human behaviour that countries will pursue tax opportunities for their revenue and fiscal purpose. That same dynamic will arise between countries as opposed to actions of that nature that are taxpayer specific.

Senator Dastyari: The question about the MAAL bill is, as you know, before the Senate—or has been before the Senate; I think it is coming back before the Senate next week. There would be a fair bit of interest from clients of yours. This is the same question I asked the two firms, earlier, about whether or not people have sought out or you have provided advice on people, potentially, restructuring themselves in light of the bill being passed.

Mr McLeod: Perhaps if I respond. I have not personally been involved directly in giving such advice but I am aware from colleagues, in line with what our counterpart said earlier, that those discussions are emerging and those thoughts are beginning. It would be appropriate for firms like ours to assist clients to think about impending regimes of that nature.

Senator Dastyari: It is not a hypothetical. There is legislation before the parliament.

Mr McLeod: To the best of my knowledge, those conversations are emerging and circulating with the firm and with the clients.

Senator Dastyari: Mr Seymour?

Mr Seymour: We are giving clients advice on that as we speak. In fact, in the explanatory memorandum to that law it actually says that we would expect companies to look at restructuring as a result of the introduction of this. You can imagine, when you are talking to a company with global supply chains and global arrangements, restructuring is not a 48-hour exercise, and that with a law that is proposed to be introduced from 1 January, clients are working very closely on that. I would also reiterate what our counterpart said before. I think the vast majority of clients we work with are coming in, are wanting to engage and will want to engage with the tax office around the new law to work out how it is going to operate for them and how it operates in our context.

Senator Di Natale: Mr Seymour, I want to pick you up on something you said earlier about the filing of special-purpose accounts for some multinationals and that in the jurisdiction where they are based they have to lodge general-purpose accounts and people can get access to that information. But you cannot get access to the full range of information. I mean you do not get information about some of the loans that are going on between
the different jurisdictions. We had evidence from the pharmaceutical hearing that some of the Australian subsidiaries said they do not actually have access to the details of their parent account. It is not the same thing, is it?

Mr Seymour: The information is not the same, but I guess in terms of the level of information an Australian company would file in their general-purpose accounts, if they are listed, it would be very similar—

Senator DI NATALE: But it is not relevant to the Australian operation. That is the difference.

Mr Seymour: It may be relevant or it may not be relevant, depending on certain facts. If you accept as a premise that the ATO, through a range of means, already has access to that information—

Senator DI NATALE: We are not talking about the ATO. We will park that to one side. We are talking about the issue of transparency and what that does. To make that point clear: if a multinational company needed to file a general-purpose account in Australia, the information that we would get would be different to the information that would be filed—

Mr Seymour: Yes, it would be a subset of it.

Senator DI NATALE: in their home country.

Mr Seymour: Agreed.

Senator DI NATALE: It seemed to confuse the issue to suggest that that information is available and that you just need to look for it somewhere else.

Mr Seymour: It would absolutely be a subset. To the point you made earlier about if you were an employee and how you would know the credit worthiness of the organisation you work for—

Senator DI NATALE: Sure, that specific issue—

Mr Seymour: That would absolutely be available—

Senator DI NATALE: That specific issue, but some of others like loans and tax avoidance—

Senator DASTYARI: On that Mr Seymour, Johnson & Johnson are clients of yours?

Mr Seymour: Yes.

Senator DASTYARI: We had the head of global tax from Johnson & Johnson come before our inquiry. The head of Johnson & Johnson is a very impressive woman who is very senior. She flew in from the US. It was a huge sign of respect for the committee because they flew her in for the purpose of giving evidence. She said that the way it works—and I am paraphrasing her words—is that head office in the US predetermine what the profitability of the Australian operation is entitled to be and then they retrofit the model to that. I would never know that or be able to get any information of that kind if I went through Johnson & Johnson's global report about the Australian operation, which is, by their own definition, a very small part. We talk about this idea of transparency, but the point I want to make is that I do not want to leave the false impression that going from general-purpose to special-purpose reporting does not have disclosure consequences for the community. It may not have disclosure consequences for the ATO. The ATO may have information it needs to have through other means. The ATO plays a different function to the public. This was information that was available until you advised Johnson & Johnson to restructure themselves in that way, or until you assisted them in doing so.

Mr Seymour: A couple of points—and I cannot comment on the specific testimony as I did not see it: the first point is that I do not think any company retrofits its arrangements. You are aware of transfer pricing rules? Transfer pricing rules are there to govern how you price things between different countries around the world.

Senator DASTYARI: I am paraphrasing, but that was effectively the evidence that was given.

Mr Seymour: I think they would like to say they did not retrofit, but they followed the relevant transfer pricing rules. The second point is yes, you would get an additional range of information in the public domain from that, but that then leads to the point I made before. Are you as a policy-making body suggesting that the right way to start to govern and enforce tax law in this country is via public disclosure and the impacts of that?

Senator DASTYARI: Mr Seymour, that is a straw man argument, because there is a separate debate. Fair enough—I am allowed to have a separate debate. There is a separate debate about tax transparency and what the public is and is not entitled to know. People like me have had a different view to the Commissioner of Taxation on whether more disclosure—’name and shame’ or whatever you want to call it—is good or bad in terms of public policy. Sensible people can have different views about what the appropriate level of disclosure is.

Mr Seymour: Agreed.
Senator DASTYARI: That is a legitimate debate. Mr Seymour, you have privately had that discussion with me. You have a different view; you are entitled to your view. It is a well-informed view; it is not an uninformed view.

This is slightly different. The difference here is we are looking at a situation where there is information that was available and is now, through the way companies have decided to structure themselves for reporting purposes, not available. I see that as a different debate to the debate about whether or not we should have greater transparency on an offenders list of some kind. That is a separate debate. My worry here is it is not about whether or not we want to go forward; we are actually going backwards.

Mr Seymour: That is where it goes into the detailed technical analysis of whether there has been a trend, as we heard from the institute before. Has it trended backwards or not? I cannot comment on whether—

Senator DASTYARI: Let me put it this way. You might want to take this on notice. Has your firm ever advised a client to go the other way?

Mr Seymour: In our audit role, the way that that works is that directors of a company come up with the whole set of accounts, including whether they are a reporting entity or not. They opine on that and form a view. As an auditor, you review that, subject to the standard, in your role as auditing and reviewing that. So they would not advise the clients to do that. They would opine, apply judgement to the test that is in the law and ask, ‘Have you met that test or not?’ That is what an audit partner would do all the time.

Senator DASTYARI: Correct me, because this may be a failure of my understanding. You perform many functions for companies. One of them is your audit function, and you have a very, very large advice business. All four major firms are very large advice businesses. Part of what you do in advice businesses is have discussions with companies about how they structure themselves. Understandably, a company would come to you and say, ‘I want some advice on how to structure myself internationally.’ You guys work across the world. You do this, you help companies grow and you do a really good job at it. You are world leaders. But you have from time to time given advice to companies on how to structure themselves or whether or not it would be appropriate for them to look at general purpose versus special purpose reporting, surely. That is part of an advice business.

Mr Seymour: That would be normally be given through our assurance practice or our audit practice, not by tax advisers. I can take that on notice.

Senator DASTYARI: If you can.

Mr Collins: I can say, as a tax partner who has given advice, I have never considered the question of whether we should structure something so accounts are or are not—

Senator DASTYARI: It seems from the evidence that we were given earlier that part of where we are heading at the moment is that this special purpose versus general purpose reporting is largely a policy and transparency question. It is not necessarily a tax question, although how you structure yourself has consequences for transparency as it applies to tax for the public.

Mr Seymour: Correct. I think that is a fair summation.

Senator DI NATALE: Can I pick you up on that point about increased transparency requirements potentially driving businesses away. Have you got any evidence that might support that?

Mr Seymour: The first thing I would say is it is not any one factor alone that impacts that overall picture. What we hear anecdotally from clients all the time is what the business environment in Australia is like to operate in. We have a huge amount of advantages in that. The fact that we have a very strong rule of law and a well-resourced tax office where you can go and ask for opinions in advance and get them, good or bad—you will get yeses and noes—is a huge advantage to doing business in this country because people want certainty. In other countries you cannot get an answer out of the revenue authority until five years after you have done it. So I think you have to look at a range of things.

Senator DI NATALE: Surely that is a very small factor amongst many other more important factors? It sounds a little alarmist to me to be citing increased transparency as something that might drive businesses away from investing in Australia.

Mr Seymour: It is one factor that you put in a range of factors. I think the debate in Australia at the moment around international tax reform is skewed towards the stick element of the debate. So it is only when you consider transparency issues together with the fact that we have a corporate tax rate of 30 per cent—one of the highest in the OECD—

Senator DI NATALE: Sure, although I get all those other factors.
Mr Seymour: In getting all of those things, I guess my point is you have got to look at the package. We keep adding to the package on the difficult-to-do-business side and that is fine. We just need to add some things on the competitive side as well.

Senator DI NATALE: We have heard a lot of evidence from people today. We have heard you guys and KPMG and Deloitte before you. There is this consensus that we all want more transparency, we think it is a good thing yet there is this resistance whenever specific proposals are put forward. It is a bit like that Saint Augustine saying: O Lord grant me chastity but just not yet. There is this pushback against it.

Mr Pratt: I do not think there is a push back. I think the point I made before is the point that most people are trying to make that to try and simplify down the transparency into a decision between special-purpose accounts and bigger accounts is completely missing the point in my mind. The reason I say that is because even if all of the relevant companies you are talking about had to disclose the general-purpose accounts, the information in that is nowhere near sufficient for anybody in the public to get a good idea of whether some companies are doing well or doing badly in their compliance.

Senator DASTYARI: So we need even more?

Mr Pratt: It is not more; it is targeted. What I am saying is that debate should not be about should there be transparency or should there not be transparency; the debate should be in an informed way, in a much more considered way and in an appropriate forum, not this one, about what the actual disclosure should be that would actually inform the public accurately. That is a very complex question. It is not easy to answer it in a one-second or two-second statement.

Senator DI NATALE: I appreciate that and I think that is probably where the debate needs to go.

Mr Pratt: Therefore we need somebody or somebodies who are set the task. Ernst and Young believes that there needs to be a separate Australian tax reform commission established that has the role of managing the process of ongoing tax reform.

Senator DI NATALE: Including transparency?

Mr Pratt: Yes, including all these issues, the whole package of ideas. The point my colleague was making was it needs to be looked at as a package. But the question about the various reform processes that have occurred in Australia and in many other countries around the world is that they are all cottage industry; they are fits and starts and depend on the wind that is blowing at the time. The reality is business wants certainty. Business wants the rules to be set and to be clear. They largely are completely agnostic as to what the rules are. Obviously they, as individual companies, when asked, will try to advocate for something that suits them but that is the whole reason why you need to have a process and an organisation to manage that whole process. The way tax reform works in Australia at the moment is that every man and his dog throw out what they would like for themselves. You have this cacophony of noise and everybody runs for cover and then eventually something pops out and it is sort of a patched-up second-best solution at best and then five or six years later it all happens again.

Senator DASTYARI: It is good for business for you guys though.

Mr Pratt: But it is a crazy way to manage.

Senator DI NATALE: I do not think anybody would take issue with what you have just described.

Mr Pratt: Therefore, the question is: who has got that responsibility? No-one has.

Senator DI NATALE: You are asking a much bigger question, a question that is far beyond the scope of this committee and one, I suspect, that probably would have some sympathy with some of us and more broadly but we can only do what is in front of us. One of the issues that is in front of us is how do we address that issue of transparency to minimise corporate tax avoidance?

Mr Pratt: One of the things all of the big four firms have been saying—and I know that in the earlier hearing the big four firms were talking about it at that stage—was should Australia unilaterally bring in things, or should we wait for the BEPS reform process? That whole debate is a caricature. It is neither one nor the other; it is a bit of both. You should, if you are making unilateral decisions, be aware of the broader, bigger picture BEPS process that is going on and make sure that we are at least internally consistent with where that is heading. That is sort of what is happening, so I am not criticising that, but it is the same sort of thing. You have a particular mandate in this Senate committee. That is true, but it is one piece of a much bigger pie. And one of the problems is we pick off little pieces and solve them, potentially, but cause all these other unintended consequences. And that is a problem that we want to make sure does not happen with transparency. I think that is all the firms are saying. As we go down the track of transparency, do not do it in a way that causes other unintended consequences because it is done as a knee-jerk reaction to a specific problem without—
Senator DI NATALE: That specific example is obviously exercising the mind of the parliament. It is before the parliament as an amendment to a specific piece of legislation, which is why it has occupied a significant part of the day. What is the potential unintended consequence that you are concerned about, and, if you think it is missing the point, why are so many companies moving away from general purpose to special purpose accounts?

Mr Pratt: I do not know whether what you said about the last point is true or not. I am not denying that it is; I just have no knowledge myself whether it is true or not, so I cannot comment, agree, deny or disagree with that.

Senator DI NATALE: Why do companies do it? We know that is a fact.

Mr Pratt: I have no idea. It is certainly not a tax reason. In my experience—as I think you said—it has never come up in any discussion I have had, over about 40 years in tax, where a company has said, 'Gee, I would like to go from general purpose to special purpose so that I can keep my tax a secret.' It has never been a topic of discussion, ever.

Senator DI NATALE: Well, they would not discuss it with you, would they?

Mr Pratt: I am saying it has never been an issue.

Senator DI NATALE: Okay, that is fine.

Mr Pratt: I think your broader question is: what is the harm in having people give general purpose? I think the harm, potentially, is that it is actually misleading information. It is information that can cause, because it is not full—

Senator DI NATALE: Can I give you an example. We politicians have a grumble about the publication of our entitlements because some of that information is misleading. Some of us might have an office fit out which we hand over to the department, that gets published and we all whinge and groan about it.

Senator DASTYARI: A helicopter ride?

Senator DI NATALE: But I can tell you that, very recently, the exposure that occurred around some politicians in the use of their entitlements has absolutely changed the behaviour of a number of people in that place. I understand the concern about information being misleading, but sometimes the greater benefit here is that we do see a significant change in behaviour.

Mr Seymour: True. But, equally, if I was to take that analogy one step further, a lot of Australians who respect immensely what politicians do in an incredibly tough job—

Senator DI NATALE: Do you know any? Are there any in the room?

Mr Seymour: I think a lot of people think that our politicians get a pretty tough ride, and if the rules were a bit more balanced you would get more people wanting to be politicians. That is the analogy to global business.

Mr McLeod: Senator, the other thing I would add to your point is that I think one of the moral hazards that Greg has mentioned is really just the costs that you impose and you get no benefit.

Senator DI NATALE: What is the cost though?

Mr McLeod: Companies that have to prepare general accounts that go to a more expansive set of information cannot do that without cost. There are going to be internal costs.

Senator DI NATALE: They are producing the information already. It is just a question of disclosure.

Mr McLeod: No, those costs are not immaterial. They are costs that you are foisting onto the private sector as part of the regulatory heap of other compliance measures that they have to comply with in the aggregate. Ultimately, the question is whether it is effective for its purpose. Also, the other point our counterparts have made is that the ATO has extensive powers to procure information from large corporates. They are, indeed, actively inside large corporates on almost a continuous basis. So if we are narrowly looking at tax compliance, particularly from the key department, the ATO, you have to assess whether the movement or the reform that you are recommending is going to in fact enhance their effectiveness relative to the status quo. Those are questions which we would proffer, and they need to be answered in order to get to the right cost-benefit assessment for that measure.

Mr Collins: I want to make a point about the work that the board of tax is doing on transparency. I am not sure whether you have talked to them about that process but they are looking already at the question of transparency. Can we have a look at that rather than start a new process or go down another path? Can we have a look at if that is getting close to where you want to go to given that is a process that has already been activated by the government asking the board of tax to look at that?
Senator DI NATALE: I am not aware of that but it might be something for the committee to be able to take on board.

CHAIR: Thank you very much, gentlemen, for appearing before us today.
HIRSCHHORN, Mr Jeremy, Deputy Commissioner, Public Groups, Australian Taxation Office
JORDAN, Mr Chris, Commissioner of Taxation, Australian Taxation Office
KONZA, Mr Mark, Deputy Commissioner, International, Australian Taxation Office
MILLS, Mr Andrew, Second Commissioner, Law Design and Practice, Australian Taxation Office

[16:30]

CHAIR: I now welcome Mr Chris Jordan, Mr Andrew Mills, Mr Mark Konza and Mr Jeremy Hirschhorn from the Australian Taxation Office. Mr Jordan, I invite you to make a brief opening statement should you wish to do so.

Mr Jordan: I will make a brief opening statement and I have brought the relevant people along today. As you know, we treat this with quite a serious approach. The community, our parliament and governments around the world have acknowledged the problems with multinational companies using complex structures to shift profits and avoid paying their fair share of tax. Domestically and globally, 2015 has been a year of progress. I feel confident about tax administration in Australia because we have community support for our action, we have support from the parliament for action, we have cooperation and coordinated collaboration internationally, we have the capability in the ATO to address the behaviours and risks we see, we have good progress and results with our compliance action to date, we have new laws coming—increased data sharing and reporting—that should influence behaviour of multinationals, and some companies are already indicating their desire to change aggressive tax structures.

As I have said previously, the majority of large corporates do do the right thing and we have a productive and open relationship with them, which often, of course, does not mean we agree with everything they do. However, with some we have to vigorously test their assertions because they are not open with us or we receive sometimes contradictory views on their tax strategies depending from what angles they are coming at. For example, I do find it odd when firms are marketing goods and services here in Australia and we are told that is a low-value activity. You heard from one today that it is a support function that simply gets reimbursed as costs. But when it is Australian goods and services that are marketed to foreign companies through marketing hubs in places like Singapore, we are told suddenly what a valuable activity those functions are. So those contradictory views just do not add up at times depending upon the angle that they are wishing to argue, and I think you heard a little bit of that again today.

Dealing with tax avoidance is a key priority for us and we know that community confidence is dependent on it. As the evidence to this inquiry has demonstrated, the ATO is committed to dealing with unacceptable tax behaviour. When it comes to multinationals, I have said repeatedly we cannot tackle these issues alone. The OECD has issued its base erosion and profit shifting reports and the world's leading economies are committed to implementing the recommendations. These new global rules implemented consistently around the world combined with the unprecedented cooperation of tax authorities are the game changer to combat tax avoidance by multinational companies who operate across tax jurisdictions. For example, country-by-country reporting will give us and other jurisdictions reports on the transfer pricing arrangements of multinationals. No longer will they be able to tell one administrator one set of facts and a different tax administrator another set. It will be a platform for us to better understand and potentially challenge their tax arrangements in our own countries.

In terms of results so far for our general large public groups, during the 2015 financial year, we completed around 50 audits and 350 reviews of large businesses which raised $2.5 billion in liabilities and we also collected $1.6 billion in cash over that financial year from such activities.

Senator DASTYARI: So that was 50 audits and 350 reviews?

Mr Jordan: In 2014-15 financial year, the audits and reviews raised new liabilities of $2.5 billion. Because the cash we collected might have been from older reviews, the actual cash collected in that year from reviews or audits that were previously done was $1.6 billion. We currently have a stock on hand of over 70 audits and 220 reviews of large businesses. For multinationals, we have commenced over 200 risk review since the ISAPS program began in July 2014 and we have 43 audits in progress. For your information, of those audits, 12 are technology companies and three are in the pharmaceutical industry. We have raised over $400 million in tax liabilities since the start of the ISAPS program and we do expect to meet that $1.1 billion target over the life of that program.

You would be aware of a recent significant Federal Court decision in our favour where we challenged the complex loan arrangements of Chevron and its multinational affiliates. As has been reported, this decision has the potential for wide-reaching effects, most immediately for groups which have charged their Australian operations...
an excessive rate of interest. We at the ATO, however, acknowledge that Australia needs investment by foreign companies in infrastructure and many other industries but that investment should not be premised on no or very little tax being paid on sometimes significant profits that are generated by such investments in Australia.

Our tax laws will be strengthened by the multinational anti-tax avoidance legislation, the MAL laws, currently before parliament. These laws will make it easier for the ATO to call to account companies that are diverting profits from Australia to low- or no-tax jurisdictions. There are about 1,000 companies that would need to consider to some degree if the legislation applies to their arrangements, and at our count there are around 80 that will need to look at restructuring to avoid the impact of that proposed legislation. In terms of effectiveness, I can tell you that already we have had approaches—and I heard one of the representatives from the firms mentioned just before us the same thing, that they have had approaches—from companies and their advisers on how to work with us to reorganise their tax affairs. This is a positive sign that we are going to see a change in the way that these entities design their tax strategies. One of the benefits of the MAL is it will bring us the ability to re-examine tax structuring and, importantly, the real economic relationships to understand where profits occur and where tax should properly be paid.

Next month we will, under the corporate transparency measures, be issuing a report that will show the tax paid by large corporates with gross revenues over $100 million other than for Australian owned private companies as the law presently stands. I note that while the community may have the opportunity to see this data for the first time, there is no change in the transparency and engagement that the ATO has with these companies. I should point out that over the last 10 years, 20 to 30 per cent of ASX 500 companies have reported a net loss to their shareholders in any given year, and the tax data we will publish should be read in that light. It is now a fact that large corporates have to consider the impact of their tax information in managing their reputation with the markets, their shareholders, their consumers and the communities in which they operate. We will see this borne out more in the new year as the companies now approaching us firm up their new tax positions and take action to resolve the question marks over their structures to ensure they are paying the fair share of tax on profits they earn, here, in Australia.

In conclusion, in terms of the future, we do have a solid platform to move forward with. The compliance work that we have been pushing ahead with this year and prior years will come to fruition with a large number of cases being finalised. We will continue to test the more aggressive arrangements in the courts to show that we are resolute about ensuring companies are not unreasonably playing on the edge, and, if they do, they can expect to be challenged. We have the OECD action plan to consider next year and we will remain active with our international counterparts.

Through the commentary this year, a lot of it in the hearings that your committee has had, you have seen firsthand the difficulties and the complexities that the ATO faces. The challenge for us continues and it will be a long and somewhat difficult road. This is not a quick and easy results type business, but you have my commitment that we will fulfil the mandate given to us by the community and continue our work to ensure Australia has a strong, fair and effective tax system. Thank you, Chair. I thought, with your indulgence, that maybe Mr Hirshhorn could make some general comments on the oil and gas industry, because I know that was a feature—

CHAIR: Yes, that would be appreciated.

Mr Jordan: just to paint a little bit of a scene there.

Mr Hirshhorn: Thank you. I wanted to start off by saying oil and gas is a critical industry to Australia's future and one that we seek to support, as the ATO, through guidance and engagement. We are very engaged with this industry. It is important to note that there are various tax policy settings that encourage investment into Australia and investment in oil and gas, specifically, and I might just flag those.

Supporting the industry, in particular, we have a very concessional regime, in relation to exploration and accelerated depreciation of capital investment in this industry. Often, when the discussion talks about corporate tax, we look at a corporate tax rate of 30 per cent, but that does not tell the full story. We have some incentives that go to ameliorate the effect of that tax rate. For Australian shareholders in Australian businesses, there is the franking system. That means that, unlike many other countries, there are not two layers of tax. The corporate tax is, in many ways, a withholding tax, not a full tax. On the other side, for foreign capital, through our thin-capitalisation rules and our thin-capitalisation safe harbour, which allows deductions for interest on shareholder debt, even where it is funded from cash reserves of the shareholder, that, also, in a sense, reduces the corporate tax rate, implicitly.
I know there was some discussion today about competition between domestic players and offshore players. I suspect their comments around there not being a distortion of the market reflect that there are two effects here, not just the shareholder debt story but also the franking story, which reduces the Australian company's cost of capital of investment. I would note, obviously, that the nature of upstream oil and gas is due to large up-front expenditure—taxes generally not paid until well into the production phase. It might be many years of production before a particular resource becomes tax payable and, indeed, significant new investment, which we have been through, can temporarily suppress tax on existing production. At this stage of the cycle, we would expect that large oil and gas would not be paying much tax, because they have significant investment. However, we are focused on several areas of transfer mispricing where particularly inbound participants in oil and gas are pushing the envelope and, in some cases, we say they have pushed the envelope too far.

There are two broad categories: the first is complex financing aimed to get deductions at high interest rates, often significantly higher than the external interest rates borne on external group debt and, in some cases, to avoid interest withholding tax, so extra wrinkles to avoid interest withholding tax as well. Many of these arrangements also have features of BEPS antihybrid arrangements so that there is a deduction in Australia but no taxation of interest in the other country. You heard testimony from Chevron today, which spoke exactly about that—that both their old arrangements and their new arrangements are, effectively, hybrid arrangements.

A current, at a small level, but a big emerging issue is around marketing hubs in the oil and gas. This has been a smaller current issue because there had not been much production, but as the big new resources come online, marketing hubs and the diversion of excess profits to low-tax trading hubs becomes a very large concern. We are spending a lot of time with industry talking about their expected models and setting out our concerns and what we describe as our 'flags on the beach'. You heard a little bit today about procurement hubs and shipping hubs. Indeed, they have the potential to divert profits to low-tax jurisdictions, but I would say that they are a significantly lower order of magnitude concern compared to marketing hubs, which is by far the largest emerging concern.

Talking briefly about financing, our argument, as it was in Chevron, is that interest rates borne by the Australian operations should broadly align with those achieved on behalf of the Australian operations as part of a larger group. The intra-group borrowing cannot be made deliberately more risky in order to justify a higher rate. In some cases, we will argue that the borrowing of the Australian groups should be in a natural currency for that business operation, rather than in Australian dollars. Of course, we are particularly concerned where the other side of the transaction is not taxed anywhere because that will create a greater incentive to inflate the interest expense. In terms of marketing hubs in particular, we agree that in many cases valuable services are being provided in the hubs. It is just that we do not think that a company acting in its own interest would stand idly by and watch an intermediary earn extraordinary profits without trying to put pressure on their supply chain; that they would say to their intermediary that they could earn a fair profit but not an extraordinary profit.

In terms of downstream businesses where you also heard testimony, it is generally of less concern, particularly now that those companies have been disaggregated—they no longer have the vertically integrated model. We have some concerns around margins in procurement hubs, but again, this is at a different scale of magnitude compared to marketing hubs and financing concerns. That was, I hope, a chance to bring together our views on some of the testimony received today.

CHAIR: Thank you very much.

Senator DASTYARI: I want to talk about Chevron for a moment. In a Federal Court case, which was deemed in favour of the case fought by the tax office, $310 million is to be paid and, as I understand, $250 million of that is the actual, with the determination of $60 million in fees and interest and a few other things. Is that correct, roughly?

Mr Mills: I will get my colleagues to correct me if I get these numbers wrong. I think it is $180 million roughly of the primary tax and another $90 between the penalty and interest, with a total of $270 million.

Senator DASTYARI: This relates to a $2½ billion loan arrangement between 2003 and 2007, is that correct?

Mr Mills: Yes.

Senator DASTYARI: There is a separate matter that is currently under audit, is that correct?

Mr Hirschhorn: Yes, it is currently under audit.

Senator DASTYARI: And you are at the information gathering stage, is that correct?

Mr Hirschhorn: Yes, it is currently under audit, as per the testimony of the taxpayer.
Senator DASTYARI: Obviously, every audit is different, but it has been in audit from October last year. Is that correct?

Mr Mills: Yes, it is correct.

Senator DASTYARI: I understand how long is a piece of string and everything is different. How long do these audits normally go for? How long would we expect an average audit of this type to take?

Mr Hirschhorn: A normal audit would take about 18 months.

Senator DASTYARI: Is there any reason to think that this will take longer than 18 months? I know you cannot give a definitive date.

Mr Hirschhorn: There is no reason why it would take longer than 18 months. Of course, the end of the audit is, as we see from the court case, not necessarily the end of the story.

Senator DASTYARI: At the end of the audit, you will make a determination and you may issue a—what do you issue?

Mr Hirschhorn: We may issue an amended assessment.

Senator DASTYARI: And that will be available to Chevron or whoever challenged that in court, should they choose to do so, if they are unhappy with that, correct?

Mr Hirschhorn: Yes.

Senator DASTYARI: And that could be in the court process for many many years, as we found previously?

Mr Hirschhorn: Yes.

Senator DASTYARI: And we are talking here about a $35 billion loan arrangement. To use the words of Mr Jordan, at this stage, you are vigorously testing the authenticity of the audit process.

Mr Hirschhorn: We are testing the price of the loan, not the existence of the loan.

Senator DASTYARI: And you are testing whether this was determined at arm's length and is an appropriate price?

Mr Hirschhorn: Yes.

Senator DASTYARI: Is that any different from what you were testing in the previous case that was just determined?

Mr Hirschhorn: It is the same question that was tested in the case.

Mr Mills: Different facts.

Senator DASTYARI: Of course. So it would be fair to say that, while every case is different, where you would end up on this $2½ billion case would provide for those of us outside a guide to where you may end up in this other matter.

Mr Hirschhorn: Certainly. The case will in a sense be the first major transfer pricing case on the pricing of money, and of course there must be some guidance out of that for the pricing of other money.

Senator DASTYARI: I was not aware of that. Is this the first ever case of its kind?

Mr Mills: It is not the first transfer pricing case but is the first one which is, effectively, dealing with finance.

Senator DASTYARI: It is the first one ever dealing with financing?

Mr Mills: In this country, at least.

Senator DASTYARI: Okay. In that one the debate was about whether or not the figures—which have been in public domain and have varied—were borrowed at 1.2 per cent and loaned to the Australian operation at nine per cent. That varied from bit to bit but those are the figures. The current one you are looking at is whether the money was borrowed at 0.2 per cent—noting that things are cheaper than they were previously—and has been loaned to its Australian operation at five per cent.

Mr Hirschhorn: I think the testimony was that they have borrowed at an Australian base rate plus 265 basis points. The Australian subsidiary has borrowed from the US parent—this was the testimony—at an Australian dollar BBSW rate plus 265 basis points.

Senator DASTYARI: The BBSW is about 250 basis points, correct?

Mr Hirschhorn: Yes.

Senator DASTYARI: So we are talking roughly 0.2 versus five per cent, correct? And you are vigorously testing.
Mr Hirschhorn: No. I think this is important. I am not going to talk about the matter, because this did not come up in the testimony—

Senator DASTYARI: Feel free to talk away!

Mr Hirschhorn: Generally, when we look at borrowing, we will test two things. We will test the margin, which goes to the credit risk of Australian operations. We will also test the base rate, which goes to the natural currency. You can in a sense view it as two separate questions.

Senator DASTYARI: You said something quite interesting which I was not aware of. I may say this is worth five per cent because it is higher because this is risky, but part of what you also look at is whether that risk is real or contrived—whether you have created the impression of risk or artificially created risk for the sole purpose of justifying. Correct? That is what you are testing here as well.

Mr Hirschhorn: That was the argument in the first case.

Senator DASTYARI: And the Federal Court ruled in your favour.

Mr Hirschhorn: Yes. We are conducting the audit and will be looking at those questions.

Senator DASTYARI: You heard this morning Chevron confirm that they are going to appeal that through the court process. How many years are we looking at before this gets resolved? I know the court processes are long.

Mr Mills: The first thing is that we have to have orders from the court before they can in fact appeal. The opportunity to appeal will probably be sorted out by Christmas. It is then a matter of getting it into the listing of the full Federal Court. I would expect that in the normal run of events you might sometimes be talking about the second half of next year before the full Federal Court would hear it. Then it is a matter of anything from three plus months. This decision took 12 months to hand down because of the level of complexity. The decision runs to more than 200 pages, so there is a lot of detail that has been put in there. So it is the normal three-months-plus time period.

Senator DASTYARI: It is a matter for the courts, obviously, and we are pre-empting based on the evidence we were given this morning, but there is a possibility that we would not see an answer to this until 2017?

Mr Mills: Or the end of 2016 at the earliest.

Senator DASTYARI: Mr Jordan, you must have the same frustration that we are talking about a matter from 2003 to 2007 but it is now a decade later that we are looking for Australian taxpayers to have a determination.

Mr Jordan: It does at times because, as we said, it is the first landmark case on the pricing of money and there are a lot of other pricing-of-money issues around. Therefore to get some finality to the principles associated with how you go about the pricing of money in that respect would be very useful for us because it could have a knock-on effect on other similar types of arrangements. Effectively what these arrangements try to do is to say that the project is all by itself—that it is a project financed as if it were totally separate from any other big groups around the world. I think this case established that there is this implicit fact that the participants are part of major world—

Senator DASTYARI: They are all part of the 280 companies called Chevron that exist in Delaware and the 200 companies called Chevron that exist in Bermuda—before we got to Luxembourg.

Mr Jordan: They are significant companies on a worldwide basis. That is part of the basic issue that Mr Hirschhorn was referring to—sometimes how you start the whole pricing thing and pretending that this is totally isolated from any other type of group around it. That is why, when we hear sometimes: 'Why are you settling? Why aren't you taking all of these things to court?'—we'll have a look at that example. In essence, it is not that complex. There was a borrowing in the US, a currency swap and an on-lending. The degree of complexity when you get into the roles and functions and risks of marketing hubs and who does what is lot higher than that. The system would crumble under itself if we took everything to court. By the way, if we lose, we are not only losing the principle that we clearly do not agree with—because we are in court—but that becomes an industry norm. Everyone will know about it and adopt the approach we do not like. Often part of settlement in these matters is to not only recognise the risk of litigation but get agreement on the future—future behaviour and treatment. It is never the public side of things. All they ever see is, 'You started here and ended up there'—but we might well have got every year in the future pretty much how we want it.

Senator DASTYARI: Mr Mills, you created a fighting fund for these kinds of matters. I am using the term 'fighting fund'—it is my term not your term. For just this Chevron matter—the $2½ billion on which the Federal Court ruled in your favour—what has that cost you in legal costs so far?

Mr Mills: About $10 million.
**Senator DASTYARI:** Do you know what it has cost Chevron?

**Mr Mills:** About $15 million, we believe. We are not 100 per cent sure.

**Senator DASTYARI:** You spent $10 million so far in legal costs, but—

**Mr Jordan:** That is external. That is not our own people or all that side of things. That is bills that we have paid.

**Senator DASTYARI:** If that goes to appeal, that will obviously go up.

**Mr Mills:** Yes, although the cost of appeals is usually marginal. You have sunk all of your costs up-front. It is a big number, without doubt, but it is the context of a great deal more.

**Senator DASTYARI:** I want to touch on Uber. I am not sure, Mr Jordan, whether you heard the evidence from Uber today. Is there anything from their evidence that you want to comment on?

**Mr Jordan:** Where do I start? I did hear their evidence. I could not resist it. If I stand back from it, what Uber wants is a change in the law. It does not like the outcome of an application of the law. I think it is a classic example of challenging the process when you do not like the outcome. I am sure you have seen all this before. We think it is a relatively straightforward thing that their drivers are providing taxi related services. Under the definition in the GST law, they are required to register and collect GST. So they are effectively saying they do not like that outcome, but they should be talking to you. They should be talking to the government to seek a change in that law. Even today they could not help themselves, because in challenging the process they make these really quite misleading—that is probably the softest way I can say it—comments, and they have said it a couple of times. They said, 'We think it's unfair that we are treated differently from anyone else in the economy.' Well, they are not. They are treated just like every hire car driver and every taxi car driver. That is why hire car drivers are involved. They say, 'We don't have a meter. You cannot flag us. You cannot do that with hire cars.' So they are treated exactly the same as any hire car driver. When they say, 'We're not treated like a pizza delivery person,' well, they do not deliver pizzas.

**Senator EDWARDS:** They are not a transport company; they are a tech company.

**Mr Jordan:** And good on them. I agree. It is a great service, very innovative, but being innovative does not mean you do not meet your tax obligations.

**Senator EDWARDS:** 'We are cool and we are hip, so leave us alone.'

**Mr Jordan:** I sometimes sense that they play this David and Goliath type of thing, but they are actually the Goliath here. They operate in 64 companies, they are a multinational enterprise valued at over US$50 billion and they have got some very aggressive tactics.

**Senator DASTYARI:** I thought they were a start-up?

**Mr Jordan:** That is what I mean—there is this: selfless, for community good, young start-up, in their garage; 64 countries; over US$50 billion. It has created enormous wealth for those people. Good on them.

**Senator EDWARDS:** I am clipping on a beard right now! I am starting a brewing company as well.

**Mr Jordan:** Good on them. As I say, they are the multinational enterprise here that operates across borders with, as you heard from the evidence, the classic structure of booking the sale outside of Australia and having a force of people here that add no value. So, if they were in Singapore on the other end, they would be very valuable, but they do not do anything here. It is a cost-plus scenario. Regarding the notions around the consultation, we consult all the time. On the GST, we have had 40 separate consultations with external parties on 40 separate matters. They try to nitpick on little bits here and there. Their issues around our consultation are certainly not on my top 100 matters of interest or issues. It is a classic example of attack the process because you do not like the outcome.

**Senator DASTYARI:** I refer to booking overseas. We have seen this: they and Airbnb are not alone in doing this. It is the whole notion of: where is the transaction taking place? To what extent has the transaction taken place in Australia? We went through this matter with Google, who do something very similar. In Google advertising, if I want to book a Google ad, it is a Singapore transaction. We heard today than an Uber transaction is done in the Netherlands. The point I made is that, for the Australian consumer, it does not really pass the believability or sniff test, where they believe they are doing a transaction with someone who has shown up at their house to pick them up and take them to the shops. For them, the idea that this is a transaction that never took place in Australia is probably a bit odd.

**Mr Jordan:** What you just said is a fair summation of what the average citizen would think. I will pass over to Mark Konza in a moment. One of the questions you were asking is: what is the tax rate in the Netherlands? I
understand it is 25 per cent, but not do assume that they pay 25 per cent. The Netherlands is a bit like Luxembourg. You saw that LuxLeaks stuff. It is a bit like Singapore in that you can back out a lot of the payments and you tend to do an arrangement. I do not know what they have done, but you tend to have an arrangement with the authorities there to sign up for a period of time and they tax a small margin at 25 per cent.

**Mr Konza:** It is very difficult to be of much assistance to you because we correct evidence. We said we would correct any specific evidence given and your witnesses have been unable to give you, really, any evidence on their income tax.

**Mr Jordan:** They are happy to come and give me a serve, but they did not seem to know much about their Australian or Dutch tax affairs in corporate tax advice.

**Senator EDWARDS:** At a corporate Senate inquiry—we found this quite mystifying—they were very short of any depth of knowledge of their parent operation.

**Mr Konza:** The only thing I can really tell you, because it is publicly-sourced information, is that if you look at some of the media articles that have been written, one article says Uber—I think—has said it has booked about five million fares in Australia over the last three years. There is another article that does a comparison between average Uber fares and average registered taxi fares, and if you look at that it says the Uber fare is about $30. Just based on publicly available information in the media—and of course I would ask the committee to take it with a grain of salt, because it is just media—it looks like about $150 million in the three years, which is $50 million a year. But they are a rapidly growing business, so maybe that is a sliding scale over those three years. Just to be fair to them, they were at pains to say that—as far as we know—80 per cent of that $150 million would come back into Australia to the drivers.

**Senator DASTYARI:** Just to touch on this issue of people booking it overseas, I know the BEPS process was looking at that, and I understand the MAAL bill does not quite address that—or does it?

**Mr Mills:** It may, to the extent to which it can be shown that their arrangement avoided the existence of a permanent establishment in Australia.

**Senator DASTYARI:** Let me put it this way: would you expect, Mr Jordan, that if the MAAL bill passed, firms that have structured themselves in such a way that they are doing their bookings overseas—not naming any individual ones, but I could give you half a dozen different examples—are the exact type of firms that would have to restructure themselves as part of the MAAL bill.

**Mr Jordan:** They are the ones we would certainly be having discussions with as to their intentions going forward because the MAAL bill is looking at that precise situation. You have operations here—a typical sales force or support function, as they call it—and the sales for the goods or services are booked overseas. Mark is more finitely the expert on this.

**Mr Konza:** There are actually two criteria: one is that they are booking their revenue overseas; the other is that the business process which results in that booking being sent overseas is supported by an Australian activity. Your question was much broader than that; it could apply to someone who has nothing to do with Australia to get some online sales. The MAAL does not address those sorts of circumstances.

Secondly, you need to understand that the MAAL would result in the taxes due on the economic activity in Australia being paid in Australia. Where someone is undertaking certain activities in Australia in support of a business whose revenues are being booked offshore, it does not mean that the tax on all of those revenues suddenly becomes Australia's. Like every other business, the Australian permanent establishment would have to pay its bills. But it does change the game a bit, in that you are suddenly saying, ‘How much should that permanent establishment be paying those overseas companies for the services it's receiving?’

**Senator DASTYARI:** To draw a broad comparison, would it then require that the firms behave in a way similar currently to how pharma companies behave? What I mean by that is that they still have things for intellectual property and other things you would be able to vigorously test from time to time. Is that drawing a kind of comparison? You saw the evidence of big pharma.

**Mr Jordan:** I will make a general attempt at an answer, and I will get Mark to be more finite. Generally, it is more the buy-sell. Then you are looking at the transfer pricing on the cost of the good or service, the payment of the royalty for the intellectual property and the platform. At least it brings the sale into here. Then we look at the costs going out. That is correct. So, not necessarily just in terms of the pharmaceutical, but just as a general principle, it goes into a buy-sell type arrangement. I buy the product from my affiliate and then I have to justify to the ATO the cost of the expenses.
Mr Konza: That is right. It does not eliminate the problem; it makes it a much more manageable problem. The MAAL will not eliminate the problem; it will turn it into a more manageable problem because it will turn it into a transfer pricing exercise. When I am talking, as I do, to tax professionals in the private sector, I tell them I think that the MAAL is a call for a return to orthodoxy. Instead of all these schemes that are seeing the money sent offshore, we go back to a more orthodox buy-sell type arrangement with a more orthodox and manageable transfer pricing problem.

Mr Jordan: Do not forget: the MAAL includes penalties of up to 100 per cent. So that is a pretty risky path to go down. We will be opening and encouraging people to come talk to us, but if they do not or they refuse, obviously we would be looking at going up to those penalty levels.

Senator DASTYARI: Going back to Chevron for a moment, is the audit with Chevron that you are currently undergoing only related to this issue of the debt, or does it go beyond that?

Mr Hirschhorn: I do not think I can really comment on that.

Senator DASTYARI: Why not?

Senator EDWARDS: It is subject to appeal.

Mr Hirschhorn: Obviously the taxpayer has testified that they have an audit in relation to the interest, and I think that confirming or denying anything further would go to their individual affairs.

Senator DASTYARI: How many audits do you have in the LNG space?

Mr Hirschhorn: I would have to take that on notice. I think you had testimony from pretty much everyone here today that we have—pre-compliance reviews, annual compliance arrangements, client risk reviews and audits, which are the phases. We generally go through—

Senator DASTYARI: You do that for pretty much every key taxpayer, though, do you?

Mr Hirschhorn: We do it for every large taxpayer, but oil and gas is, of course, large, so this industry is pretty easy to get your arms around in terms of the number. I think you can safely assume that every significant oil and gas participant is under constant review by the tax office.

Senator DASTYARI: At some point in the cycle. How many current court cases do you have? I know we have talked about the Chevron one, and you obviously classify this with significant or key taxpayers. How many court cases do you currently have?

Mr Mills: I will have to take that on notice. I do not those numbers at my fingertips.

Senator DASTYARI: Are we talking dozens? Are we talking—

Mr Mills: No, probably less than ten.

Senator DASTYARI: That is not including every Tom, Dick, and Harry who—

Mr Mills: No, you are talking large significant—

Senator DASTYARI: I think your second quadrant is the key taxpayers, which means high amount, low risk. How many key taxpayers are there? We have gone through this before, but you have the figures.

Mr Hirschhorn: The [inaudible] is generally companies with more than $5 billion turnover, and of course that varies but at the moment I think there are about 75.

Senator DASTYARI: Would you take this on notice: how many matters before court do you have with those 75? And you are saying you can get me a final figure, but around 10 or so.

Mr Mills: Less than that number. I would also say that, generally, unless it is a matter which is going to lay down new principle, the Chevron experience would show that even getting to court is a long process. You will have seen separately our settlement statistics. Unless there is a principle to be set down or some behaviour we really want to call out, many of these cases do not go to court because it is such a long drawn out process to finally resolve the matter.

Senator DASTYARI: For both parties.

Mr Mills: Yes.

Senator EDWARDS: Chair, if I may: I only have one question that has been troubling me since after lunch. The legislation which we currently have in the Senate chamber which is being debated and should not be—we should be passing it and getting on with it—

Senator DASTYARI: It did pass. We both voted for it in the end.
Senator EDWARDS: The issue that we have is this: if I wanted to get into the business of technology and, as part of that technology, I wanted to offer the transport of people and charged somebody $100 for a ride by virtue of the service that I offered in Australia, but I then told you that I had to pay somebody who was located in another jurisdiction $25 of that $100, because they gave me the idea of starting this business and they said that they would collect the payment for the people that I took on that ride, whether it be a joy-ride, a ride to work, a ride to a party or whatever, and they were going to repatriate $25 of that $100 to that other person, who was smart and clever and gave me that idea of doing it, would you be happy that I did that and said, 'Don't worry about the $25. It's due to the other people. I am taking $100 off them, but I am only keeping $75 in Australia.'? Would you be happy with that? Does the MAAL legislation go some way to fixing it?

Mr Jordan: It is not a yes-or-no answer. I will go to the latter bit: the MAAL could well impact, because of the reasons Mr Konza has said, on that type of structuring. That is why the benefit of the MAAL is quite significant to us. We are fairly positive about the restructuring potentials of a lot of these companies versus the risk they would carry if the MAAL becomes law. That would be very useful tool for us to have. As to the 25-75 split, even if it were all here and they were paying royalties for the platform or the use of other things—

Senator EDWARDS: The good idea.

Mr Jordan: It is the good idea, that all then becomes a pricing. What is fair? What would arms-length people pay? You are then, fair and square, into that transfer pricing set of provisions.

Senator EDWARDS: We do not have that transparency now under the model that I just described to you, though.

Mr Jordan: It is hard for us to know what the expenses are relevant to that $25 now and how that is priced et cetera. That is a difficult thing for us because we know the $75 stays here, but we have very little visibility at the present time about the $25.

Mr Konza: In that hypothetical example that you set up, do not forget that the drivers who are choosing to give up that 25 per cent are third parties to that taxpayer. That is the market working. I am giving up a quarter of my payment. Is that fair? I have to make that judgement. Competitors will come along and are coming along—'Obviously you have an idea for a competition product.' But at least the MAAL legislation brings it into the realm of manageable problems and we can look at those sorts of questions.

Senator EDWARDS: If I were a company like Cabcharge, I should probably think about upping stakes and heading to Ireland at 12½ per cent tax, creating a platform and calling it a day here in Oz.

Mr Jordan: In a way it is the same sort of feature, that a service is provided. The service in that case is the ability to use a credit card for payment and to get a statement at the end of a month, a quarter or whatever, of typically work related expenses that people have used. You have the ability to use a credit card for payment, instead of your own credit card, because they are mostly for work related things, like Cabcharge. In theory, that is the sort of thing where they could sit wherever they like and provide that service.

Senator EDWARDS: In theory.

Mr Jordan: In theory.

Mr Konza: It is not only transport related. We have actual ruling requests from taxpayers in different industries who have established offshore businesses in the same bricks-and-mortar industry that they are currently in. I think their idea is that they either get them to feed off each other or one is an insurance policy. If the bricks-and-mortar industry eventually fails, they already have their online presence. There are companies that are looking at that because the internet is fundamentally a different platform. Under the internet, you do not need machines in cars, which is one of the things that Cabcharge are supplying. You do not need bricks-and-mortar stores if you are selling clothing. There are people who are moving.

Senator EDWARDS: You have been terrific throughout this whole inquiry. This inquiry has been very good at running concurrently with legislation, G20 activity and OECD activity, which are all running as we speak in real time around the government, and the opposition party has been very good in coming the table, though a little bit hesitantly and not as quickly as I would have liked. Thank you. Is there anything you would like to say? This is probably the last hurrah before I hand over the chair.

Senator DASTYARI: We will always have estimates!

Senator EDWARDS: You will!

Mr Jordan: No, there is nothing in particular, but we thank you for the opportunity to come along. It has certainly increased the discussion and community debate on some of these practices. As I said in my opening statement, it is good for us to have the support of the community for the hard actions we are taking, as well as the
support of parliament in providing us with the laws that we need. Never before in my too-long period in this field has there been, generally in the community, this level of sophisticated debate on quite complex matters. It has been a useful exercise from our point of view regarding some of the difficulties we face too, because it is brought out into the public arena that it is not always as easy as having a few discussions and issuing an assessment to someone. These are long-term, complex, difficult matters that are often in a grey area. We have been able to reinforce that we have a very solid and transparent working relationship with most large corporates, particularly Australian based ones. There is that smaller group of mostly foreign multinationals where we believe they have structured beyond what is a reasonable amount. I like that notion of getting back more to the orthodoxy of booking sales where the activity is, and then we can have the argument about the pricing, but at least we have a better overview of what the transaction looks like.

**Senator EDWARDS:** I thank you, Mr Jordan, and your officers.

**CHAIR:** The meeting is adjourned.

Committee adjourned at 17:23