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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Tax Laws Amendment (Tougher Penalties for Country-by-Country Reporting) Bill 2016

EXPLANATORY MEMORANDUM

and

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Circulated by authority of

Member for Fraser

Andrew Leigh MP

Tax Laws Amendment (Tougher Penalties for Country-by-Country Reporting) Bill 2016

OUTLINE

In 2015 Parliament passed the *Tax Laws Amendment (Combating Multinational Profit Shifting) Act* which strengthened Australia's anti-avoidance laws and created the new legal classification of 'significant global entity' for companies with global turnover above $1 billion.

Significant global entities must now provide the Commissioner of Taxation with an annual country-by-country report detailing their economic activity and tax paid in every jurisdiction where they do business.

Country-by-country reporting is a key initiative for addressing multinational tax avoidance. However, under the current provisions of the *Taxation Administration Act 1953*, the maximum penalty companies are liable for if they fail to lodge these reports is $5,400 (30 penalty units). This raises the strong possibility that global firms will simply opt to pay the fine rather than lodge their country-by-country reports.

This Private Members Bill amends the *Income Tax Assessment Act 1997* to introduce a specific penalty regime for significant global entities with country-by-country reporting obligations.

Under this new regime, the maximum penalty for failure to lodge a country-by-country report will be $270,000 (1500 penalty units).

The bill also empowers the Commissioner of Taxation to audit firms which still fail to lodge their reports after the maximum financial penalty has been reached.

FINANCIAL IMPACT

The bill will have no financial impact.

NOTES ON CLAUSES

Schedule 1 of this bill amends the *Income Tax Assessment Act 1997* to create a specific class of administrative penalties for significant global entities which are required to give the Commissioner a statement under section 815-355 of the Act.

287-75 Liability to penalty

This section indicates that the provisions of the bill apply if a company is required to provide a country-by-country report to the Commissioner of Taxation under section 815-355 of the *Income Tax Assessment Act 1997.* That section of the Act deals with reporting obligations by significant global entities, defined as companies with global annual turnover above $1 billion.

This section ensures that only significant global entities will be captured by the increased penalty provisions of this bill.

287-80 Amount of penalty

This section sets the penalty for failing to provide a country-by-country report to the Commissioner of Taxation at 125 penalty units for each period of 28 days that a report is outstanding after it becomes due, up to a maximum of 1500 penalty units.

As detailed in Schedule 1 Subdivision 286-B of the *Taxation Administration Act 1953* (and by extension, section 4AA of the *Crimes Act 1914*), the base amount of a penalty unit is currently set at $180.

This means that in practical terms, the maximum administrative penalty set by section 287-80 is $270,000.

287-85 Examination of affairs for extended non-compliance

This section stipulates that the Commissioner of Taxation must consider making an examination (in lay terms, an audit) of the affairs of a significant global entity where it has reached the maximum allowable number of penalty units for failing to lodge a country-by-country report, and this report remains outstanding.

The maximum number of penalty units will be reached at the end of the 11th period of 28 days after a country-by-country report is due. In practical terms, this means the Commissioner of Taxation may launch an audit of a significant global entity which has failed to lodge its country-by-country report after a period of 308 days from when it becomes due.

The provisions of Schedule 1 apply for a report which becomes due under section 815-355 of the *Income Tax Assessment Act 1997* at any time after this Bill receives Royal Assent.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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This bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the bill

This Private Members Bill amends the *Taxation Administration Act 1953* to introduce a specific penalty regime for significant global entities with country-by-country reporting obligations.

Human rights implications

This bill does not engage any of the applicable rights or freedoms.

Conclusion

This bill is compatible with human rights because it relates exclusively to administrative penalties for corporations.

Andrew Leigh
Member for Fraser