HD Does Australia have the stomach to go after corporate tax avoidance?

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There is a lot of lofty talk about cracking down on multinational tax avoidance. But whether the Australian government has the will to make any concrete moves on it is another matter entirely.

We've now had a foretaste of the inevitable business lobbying when the OECD and G20 crackdown on tax avoidance by multinational companies shifts from groundwork to implementation at the end of 2015.

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Last Thursday Richard Goyder, president of the B20 business grouping for a few more weeks and also boss of conglomerate Wesfarmers (which owns Coles and mines **coal**), warned the crackdown on tax could backfire with unintended consequences including taxing profits from commodity exports in the country of destination. "If we sell **coal** to Japan, is the profit derived in Australia or is the profit derived in Japan?" he asked.

Goyder was quickly backed by ANZ chairman David Gonski, who told The Australian Financial Review the next day : "It may be right that you've got to intensify the rules to increase tax in Australia, but you must do the homework to make sure that as a smallish country, we are not losing more in the process."

On one level, there was nothing much to Goyder's observation—it was a throwaway line in answer to an off-topic question at a B20 press briefing. There was no developed Wesfarmers or B20 thinking behind the warning. But on another level, it is a pretty alarming comment for the president of the B20 to make, particularly for a commodity exporter like Australia with potentially **billions** in tax revenue at **stake**.

The concern arises because the Organisation for Economic Co-operation and Development and the G20—44 nations working together and accounting for roughly 95% of world GDP—are trying to achieve an overarching aim: "ensuring that profits are taxed where economic activities generating the profits are performed and where value is created".

The intent is to tackle double non-taxation, when multinationals are taxed in neither the source country (where the product or service comes from) nor the resident country (where the product or service is sold).

One way of doing this is to consider whether the multinational has a presence in the resident country—defined as a permanent establishment. The focus has been on tax treatment of intangible assets, service economies and global supply chains. It has not been on the OECD or G20 agenda to make primary exports taxable in the country of destination. Given the G20 includes emerging economies dependent on resource exports, Tax Justice Network campaigner Mark Zirnsak says it is "patently stupid to suggest that would ever be an outcome".

The Australian government leans the same way, with officials pointing to the following key paragraph in the "bible", the OECD action plan on base erosion and profit shifting (BEPS) (the government's emphasis added):

The point being that commodity exports are generally taxed already—or if they aren't taxed heavily enough, as in the example of **coal** miner Glencore , it is because they use aggressive but legal tax strategies like thin capitalisation and transfer pricing, which are being tackled separately.

But industry tax experts advising treasury on the G20 reform agenda told Crikey the Goyder scenario is a risk—the marketing arm in **China** or India of an Australian **mining company** could well be considered a permanent establishment attracting tax liability—and the debate was valid given the discussion paper on the artificial avoidance of permanent establishment status was only published at the end of October.

Monash University business law and taxation expert Professor Rick Krever told Crikey that there was an inevitable push, particularly from countries like India and **China**, to use formulas for allocating profit between divisions of multinationals that give a greater share of tax revenue to the resident country. The question for Australia is whether, as it transitions slowly into a service economy, it stands to lose more in lower tax revenue from commodity exports than it would gain from higher tax revenue on imported goods and services. In a resources boom, when commodity prices are high, we lose. Over the longer run, perhaps, we win.

So far, in the debate on taxing multinationals, the companies in the firing line have largely been left to fend for themselves. The business lobby has been sitting off to the side, in recognition that (a) there is a crying need to overhaul the century-old international framework dominated by bilateral tax treaties, and (**b**) the public has lost confidence that companies are paying their fair share of tax. B20 "sherpa" Robert Milliner explains the group took a deliberate decision to focus on a positive agenda this year, targeting growth and jobs, leaving governments to negotiate a new international tax framework. The main objective so far has been to ensure all G20 countries stay "on the bus" so the new framework doesn't splinter—a fear the Business Council chief Jennifer Westacottexpressed last week —and business ends up with its worst nightmare, double taxation (in both source and resident countries).

Once all the reports are in and consensus proposals for nations to legislate are drafted, business will come off the sidelines. But that wait-and-see strategy could also prove disastrous for business, if domestic debates driven by special interests **lead** to nobbled tax laws that vary from country to country.

Does the Abbott government have the will for a gloves-off fight over tax avoidance by multinationals? Shadow Assistant Treasurer Andrew Leigh says no, pointing to heavy redundancies at the Tax Office, our failure to early-adopt common reporting standards agreed at the G20, and legislative measures abandoned by Treasurer Joe Hockey, which Labor claims would've generated $1.1 **billion** in revenue, principally by changing rules covering thin capitalisation and offshore banking. The government disputes those figures and says Labor never bothered to legislate its own reforms.

"Wherever companies engage in extraordinary activity in order to avoid tax, we will go after them," said Hockey.

Ultimately the government's will to act depends on whether it sees votes in it. In Australia, we already know from the dismal 2010 **mining** tax debate that the reading age of the general public on tax policy is pretty low. Tax is complex and dry—ironically, fertile ground for misinformation and simplistic scare campaigns. By 2015, at least, we will have had two years to come to terms with the wafty multilateral-ese that blights the OECD and G20—and our own Senate inquiry (which, if Greens leader Christine Milne succeeds in dragging Rupert Murdoch in, could actually deliver the best fireworks since the late Kerry Packer testified against cross-media laws in 1991). Attention must be paid. Eyelids, meet matchsticks.

RF http://www.crikey.com.au/?p=467089

CO wsfrm : Wesfarmers Ltd | oecode : Organisation for Economic Co-operation and Development | groptw : Group of 20

IN i8396 : Diversified Holding Companies | ibcs : Business/Consumer Services

NS e211 : Government Budget/Taxation | gteva : Tax Fraud | c12 : Corporate Crime/Legal Action | ccptax : Corporate Taxation | c13 : Regulation/Government Policy | ccat : Corporate/Industrial News | e21 : Government Finance | ecat : Economic News | gcat : Political/General News | gcrim : Crime/Legal Action | gfinc : Financial Crime | ncat : Content Types | nfact : Factiva Filters | nfcpex : C&E Executive News Filter | nfcpin : C&E Industry News Filter | gfraud : Fraud

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