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International  
Corporate Tax  
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## **Submission from the Centre for International Corporate Tax Accountability & Research, the Tax Justice Network Australia, and the Synod of Victoria and Tasmania, Uniting Church in Australia on Shadow Economy Procurement Connected Policy**

**23 September 2022**

The Centre for International Corporate Tax Accountability & Research (CICTAR), the Tax Justice Network Australia (TJN-Aus), and the Synod of Victoria and Tasmania, Uniting Church in Australia welcome this opportunity to provide comment on the Commonwealth Government's "Shadow Economy Procurement Connected Policy. Consultation Paper on Performance Review".

As an overall comment, the submitting bodies strongly support the intent of the Shadow Economy Procurement Connected Policy but believe that the current requirements to obtain and submit a statement of tax record (STR) from the ATO for any tenders over \$4 million are insufficient and must be strengthened. When introducing a new integrity criterion to procurement policy, a filter that excludes no one or does not cause any businesses to modify their behaviour is a mere form-filling exercise with no real impact. From the evidence provided and referenced below, substantial federal contracts continue to be awarded to corporations with a pattern and ongoing practice of aggressive tax avoidance. The requirements must be strengthened so that federal procurement can be leveraged to improve transparency and compliance for all taxpayers and to level the playing field for all businesses. In particular, small and medium enterprises and Australian companies are at a significant competitive disadvantage when competing for contracts with multinationals that are able to avoid tax obligations through mechanisms such as transfer mispricing within complex global corporate structures.

### **1. Has the PCP been effective in achieving the broad policy aims?**

The submitting bodies are of the view that it is unlikely the PCP has done much to:

- Reduce shadow economy behaviour by businesses involved in Government procurements contracts; and
- Create a level playing field by eliminating competitors who can undercut their competition by not complying with crucial tax obligations.

The submitting bodies remain concerned that the assessment criteria in the PCP are too narrow, allowing businesses that have been involved in shadow economy behaviours to win Government procurement contracts. For example, companies that have engaged in wage theft are not caught by the PCP. It will then be a question if such behaviour is caught by other criteria in the tendering process.

Work by CICTAR has shown that Commonwealth contracts were awarded to corporations with suspect tax practices after the PCP was introduced.<sup>1</sup>

### Northrop Grumman

Northrop Grumman is a large contractor with the Department of Defence and a major US multinational corporation. Northrop has had federal contracts worth over \$10.1 billion since 2007 and had 2019 contracts for \$208 million.<sup>2</sup> According to the 2017-18 ATO corporate tax data, the company had a total income of \$243 million and paid zero corporate income tax.

Northrop Grumman Australia Pty Ltd is directly owned by Northrop Grumman Global Holdings Limited in the UK. The 2018 annual filings of the UK company indicate that it is owned by Northrop Grumman International Holdings BV in the Netherlands. Very limited information is available from the company's Dutch filing or the several other Northrop Grumman subsidiaries, including Northrop Grumman Asia Holdings BV, which are also incorporated in the Netherlands.<sup>3</sup>

Northrop Grumman's annual report filed with the SEC discloses only three subsidiaries, including Northrop Grumman Overseas Holdings, Inc, all of which are incorporated in Delaware. Older SEC filings showed Northrop Grumman Foreign Sales Corporation incorporated in Barbados. According to documents from the Paradise Papers leaks, this company was closed in 2001. The company still operates Northrop Grumman Singapore Pte Ltd in Singapore.<sup>4</sup>

The Australian filing shows the company made a loss in 2018, which was partially driven by \$29 million in recharges paid to offshore related parties. An additional \$49 million was still owed to related parties, not including a \$92 million loan owed to the direct parent company in the UK. More than half of this loan was at an interest rate of 7%, far above market rates. These related party sales are significant in the context of the cost of sales of under \$190 million.<sup>5</sup>

### IBM

IBM is a US-based IT multinational, the world's largest patent holder and one of the biggest global employers. In Australia, IBM ranks as the 21<sup>st</sup> largest federal government contractor, having received contracts valued at over \$8.7 billion between 2007 and 2019, including \$165 million in 2019.<sup>6</sup> According to ATO corporate tax transparency data, IBM's total revenue in Australia exceeded \$3 billion in 2017-2018, but the company paid zero corporate income tax.

The parent entity for IBM's business in Australia and New Zealand is IBM A/NZ Holdings Pty Limited. It is a subsidiary of IBM AP Operations BV, headquartered in the Netherlands. IBM's annual filing (10-

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<sup>1</sup> Jason Ward, Centre for International Corporate Tax Accountability and Research, Submission to the Senate Finance and Public Administration Legislation Committee on the inquiry into the *Public Governance Performance and Accountability Amendment (Tax Transparency in Procurement and Grants) Bill 2019*, 12 February 2020.

<sup>2</sup> *Ibid.*, 4.

<sup>3</sup> *Ibid.*, 4.

<sup>4</sup> *Ibid.*, 4.

<sup>5</sup> *Ibid.*, 4.

<sup>6</sup> *Ibid.*, 5.

K) with the US SEC discloses two subsidiaries in Australia – IBM Australia Limited and IBM Global Financing Australia Limited – yet there are at least six other entities registered with ASIC, including one in the Philippines. The Dutch parent company is not disclosed in the SEC filing either. Only three Dutch companies are disclosed in the SEC filing, but there are at least 20 Dutch IBM subsidiaries. Likewise, the SEC filing only discloses two Irish subsidiaries, but a search of Ireland’s company registry for “IBM” identifies 29 separate entities, not including IBM Irish subsidiaries under other names.<sup>7</sup>

The financial report for IBM A/NZ Holdings Pty Limited shows that in 2018, the company paid \$330 million in dividends to its immediate parent entity in the Netherlands. In addition, it paid nearly \$393 million in 'software fees' to the ultimate parent entity in the US. In 2018, IBM A/NZ Holdings Pty Limited had loans worth over \$2 billion from the immediate parent company in the Netherlands at interest rates of 3.82% to 6.74%. IBM International Treasury Services Company (Ireland) held deposits of nearly \$258 million for the Australian company, down from \$1.1 billion in 2017, at a substantially lower interest rate of 1.7%. These measures may allow IBM to reduce its profits in Australia and shift them to tax havens.<sup>8</sup>

IBM’s complex global corporate structure enables the company to engage in aggressive tax planning and to operate with reduced transparency. It appears that a significant proportion of its global business, including the Asia-Pacific region, occurs through a chain of holding companies domiciled in the Netherlands. Meanwhile, finance to these companies is extended via IBM International Treasury Services Unlimited Company registered in Ireland, which is a subsidiary of International Business Machines Limited, incorporated in the UK. Through a complex chain of intermediate UK holding companies, the UK business is also owned through the Netherlands.<sup>9</sup>

IBM International Treasury Services is exempt from filing financial returns in Ireland, yet it funnels billions to and from IBM subsidiaries around the world. The immediate UK parent of the Irish Treasury Services company also has a 5.06% holding in IBM Treasury Corporation in Barbados. It is not clear how the Barbados company is used or the multitude of other IBM tax haven subsidiaries, some disclosed and some not disclosed.<sup>10</sup>

IBM is under audit by the IRS in the US for 2013, 2015 and 2016 and has an active dispute with Indian tax authorities. IBM has paid settlements of US\$640 million and US\$250 million in interest and penalties to tax authorities between 2016 and 2019.<sup>11</sup>

## SAP

SAP is a German-based multinational corporation that specialises in business software. It reported a consolidated profit before tax of €5.6 billion in 2018 on global revenue of €24.7 billion. It has had federal contracts from the Australian Government worth at least \$2.3 billion between 2007 and 2019, including \$65 million in 2019 alone.<sup>12</sup> The most recent ATO tax transparency data shows that in 2017-2018, SAP had total revenue of \$1.05 billion but paid \$0 in tax in Australia.

SAP Australia Pty Ltd is a direct subsidiary of the German parent company, SAP SE. The 2018 Annual Report lodged with ASIC shows that the Australian subsidiary registered an operating loss of \$28

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<sup>7</sup> Ibid., 5.

<sup>8</sup> Ibid., 5.

<sup>9</sup> Ibid., 5.

<sup>10</sup> Ibid., 5.

<sup>11</sup> Ibid., 5.

<sup>12</sup> Ibid., 6.

million on revenue of \$1.16 billion in 2018 and an operating loss of \$85 million on revenue of \$1.05 billion in 2017.<sup>13</sup> It raises tax concerns that SAP's global operations are highly profitable, but the Australian operations appear to lose money.

Related party transactions accounted for 23% of revenue and for 55% of operating expenses for SAP Australia Pty Ltd in 2018. The company paid royalties and expenses to itself of \$434.2 million, of which \$399.3 million was to the German parent company and \$34.8 million to other related entities. It purchased \$30.6 million in services from its parent company and \$42.4 million from other related entities. Finally, \$117.5 million is recorded as 'other expenses', of which \$69.3 million was paid to the parent and \$48.2 million to other related entities. In addition to this, the company provided a dividend of \$997,840 to the parent company, which also charged the Australian subsidiary over \$1.1 million as an "interest expense on late royalty payments". With no explanation, the company reported a "write-off of deferred tax assets" of over \$60 million in 2017.<sup>14</sup>

These intercompany payments, through royalties, services and 'other', may allow SAP to artificially reduce or eliminate taxable profits in Australia and shift those profits offshore, where they may be subject to lower tax rates.<sup>15</sup>

A 2013 [Reuters](#) examination of SAP accounts found that the company, using techniques similar to those deployed by US tech giants, reduced its global tax bill by more than €100 million. Twenty per cent of global profits were shifted to Ireland, which accounted for less than 1% of sales and employees. The transfer was done through related party offshore loans at high-interest rates, payments for intellectual property and other forms of transfer pricing.<sup>16</sup>

It appears that these practices may be continuing through SAP Ireland US-Financial Services Designated Activity Company, one of many Irish subsidiaries. The 2018 annual report of this company showed pre-tax profits of US\$1.59 billion, including US\$563 million in interest income from related parties and more than US\$1 billion gain from the sale of a subsidiary to another related party. The company paid dividends to its immediate parent company, another Irish entity, of US\$2.9 billion. The company, with three employees, "is engaged in supporting the activities of the SAP group by providing treasury service and US dollar financing to SAP group companies." The company reported an effective tax rate of 4.13%, significantly below the already low 12.5% corporate tax rate in Ireland. The reduced tax rate was due to "exchange rate differences". It had loans of over US\$7.3 billion to related parties.<sup>17</sup>

The Australian filing failed to disclose which 'other entities' it is transacting with or to provide reasoning for some of these transactions. SAP SE, the publicly listed German parent company, discloses 265 subsidiaries, which include entities registered in:<sup>18</sup>

- Netherlands (10),
- Ireland (7),
- Singapore (5),
- UAE (5),
- Hong Kong (4),

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<sup>13</sup> Ibid., 6.

<sup>14</sup> Ibid., 6.

<sup>15</sup> Ibid., 6.

<sup>16</sup> Ibid., 6.

<sup>17</sup> Ibid., 6-7.

<sup>18</sup> Ibid., 7.

- Switzerland (2),
- Cayman Islands (2),
- Mauritius (1),
- Bermuda (1),
- Panama (1),
- Mauritius (1),
- British Virgin Islands (1), and
- Luxembourg (1).

SAP's 2018 Annual Report stated that it is in dispute with a number of tax authorities around the world, including Germany and Brazil. The latter was litigating the deductibility of intercompany royalty payments and intercompany services and was seeking €95 million in unpaid tax. German authorities meanwhile were pursuing SAP SE for €1.75 billion, including penalties of €842 million, over the company's financing structure.<sup>19</sup>

SAP SE has adopted a code of business conduct that prohibits bribery and corruption and has implemented mechanisms to investigate and review compliance risks in relation to violation of anti-bribery laws. The company has faced investigations for bribery in Kenya, Tanzania, South Africa and Panama. SAP's 2018 Annual Report stated that it was facing allegations of violation of anti-bribery laws in 'Brazil, Indonesia, South Africa, and other countries'.<sup>20</sup>

## Oracle

Oracle received at least \$1.2 billion in Australian federal contracts between 2007 and 2019, including \$101 million in 2019.<sup>21</sup>

Globally, Oracle reported operating margins of 34% each year from 2016-2018 compared to Australian margins averaging less than 2.5% over five years (2013/14-2017/18). These significant and consistent gaps raise concerns about profit shifting to reduce taxable income in Australia. In 2018, massive related party transactions of at least \$773 million for Oracle may have facilitated the shifting of profits from Australia to tax havens. Oracle was disputing an additional assessment of over \$300 million with the ATO. The transfer pricing dispute may represent profit shifting of around \$1 billion out of Australia.<sup>22</sup>

Oracle is one of many US-based multinational tech giants that used the infamous "Double Irish Dutch Sandwich" scheme to avoid billions in global corporate income tax payments. The top Irish holding company registered in the Isle of Man, which owns the Australian business, reported profits of US\$5.6 billion and US\$8.6 billion in 2018 and 2017, respectively. That is compared to the global net income of US\$3.8 billion and US\$9.3 billion. The non-resident Irish company paid no income tax.<sup>23</sup>

In 2013, Oracle paid €11m in Irish income tax on revenues of €7.24 billion that was reported in Ireland. The amount was 27% of global revenue, but the tax was only due on Irish profits of €164.4 million. The same global corporate structures are still intact. In 2017, prior to Trump's US tax cuts,

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<sup>19</sup> Ibid., 7.

<sup>20</sup> Ibid., 7.

<sup>21</sup> Ibid., 8.

<sup>22</sup> Ibid., 8.

<sup>23</sup> Ibid., 8.

Oracle – with US\$54.4 billion in offshore accounts – ranked 4<sup>th</sup> in the list of the large US corporation with billions stashed offshore. The offshore amount was 82% of Oracle’s total cash.<sup>24</sup>

Various ASIC filings show that Oracle Corporation Australia Pty Ltd, the primary Australian operating company, is owned through a complex corporate chain leading to Ireland. The primary Australian operating company is directly owned by Oracle Holdings Australia Pty Ltd, which is owned by Oracle Consolidation Australia Pty Ltd, which is owned by OCAPAC NIH1 Company UC (Unlimited Company) in Ireland. Irish filings show that this Irish company is owned by ORACLE CAPAC SERVICES UC in Ireland and ORACLE OTC HOLDINGS GENERAL PARTNERSHIP in Delaware. Delaware is widely known as a tax haven, and limited information is available on companies incorporated in Delaware and even less on general partnerships.<sup>25</sup>

ORACLE CAPAC SERVICES UC has one share owned by the same Delaware general partnership and the remainder of shares held by Oracle Global Partners, an Irish general partnership that does not file financial statements. The address of Oracle Global Partners is 70 Sir John Rogerson's Quay in Dublin, Ireland. Several other Oracle holding companies registered at the same Dublin address, like this one, are non-resident Irish companies registered in the Isle of Man. The Dublin address, different from the operational Oracle subsidiaries in Ireland, is the location of the International Financial Services Centre, where hundreds of companies are registered. It is also the address of Matheson, an Irish law firm that specialises in helping US multinationals – particularly tech and pharmaceutical companies – use Irish tax law to avoid global corporate income tax.<sup>26</sup>

Oracle CAPAC Service UC, which is the indirect owner of the primary Australian entities, directly owns Oracle New Zealand. The 2018 filings from Oracle New Zealand showed a different ownership structure than the Irish filing and contained more details than the Australian filing. The New Zealand filing explained that its immediate parent, Oracle CAPAC Service UC, "is held by OCAPAC Holding Company UC (non-resident Ireland); which in turn is held by Oracle International Corporation (US); which in turn is held by Oracle Global Holdings, Inc. (US); which in turn is held by Oracle Systems Corporation (US), which in turn is held by Oracle Corporation (US)".<sup>27</sup>

The New Zealand filing indicated significant tax disputes and contained more information on offshore-related party transactions than the Australian filings. The New Zealand company reported NZ\$132 million in revenue and \$103 million for the cost of products sold. Purchases from offshore related parties made up 99.6% of the cost of products sold. The company stated that "the majority of related party transactions were with Oracle CAPAC Services", the parent company and "include sub-license fee and hardware support fees, trading of goods and services, interest charges and purchase accounting entries." The filings note that the "Group remains in discussions with the IRD [NZ tax authority] in respect of the historic treatment of transfer pricing." Oracle's tax dispute in New Zealand became public in December 2019.

Despite having thousands of global subsidiaries, Oracle’s 2018 annual report (10-K) filed with the US SEC only listed nine subsidiaries, five in Ireland and three in Delaware and one in California. OCAPAC Holding Company UC is one of the five Irish companies disclosed in Oracle’s SEC filing. According to a search of the company register in the Isle of Man, all five of the disclosed Irish companies are non-

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<sup>24</sup> Ibid., 8.

<sup>25</sup> Ibid., 8.

<sup>26</sup> Ibid., 8-9.

<sup>27</sup> Ibid., 9.

resident Irish companies, meaning they are incorporated in Ireland but registered in the Isle of Man and not subject to the 12.5% corporate tax rate for Irish companies.<sup>28</sup>

The 2018 financial statements from Ireland did not mention the Isle of Man registration but stated that the company's "accounting records are maintained at 31-37 North Quay, Douglas, IM1 4LB, Isle of Man...." The company had no employees and "has no tax liability in Ireland or any other jurisdiction."<sup>29</sup>

According to the 2018 financial statements, OCAPAC Holding Company UC received dividends of US\$5.777 billion from subsidiaries and paid a dividend of US\$5.390 billion to its shareholders. The company recorded a profit of US\$5.606 billion, down from US\$8.606 billion in 2017, and paid no tax in either year. After the dividend payment, net assets were US\$26.805 billion. After the end of the financial year, an interim dividend of up to US\$5.500 billion was approved to be paid to shareholders in the 2019 financial year and an interim dividend of up to US\$4 billion in 2020.<sup>30</sup>

The company also directly held a 100% interest in a Mauritius holding company, Oracle Global (Mauritius) Limited and indirectly owned a 100% interest in a Luxembourg holding company, Oracle CAPAC Finance S.a.r.l. The filing confirmed the indirect ownership (99.93%) of all of the Australian companies and many other global companies.<sup>31</sup>

One level below the OCAPAC Holding Company UC, and one level above the direct Irish owner of the Australian business, is Oracle CAPAC Services UC in Ireland. According to the 2018 financial statements, the principal activity of Oracle CAPAC Service UC was the "earning of sub-license fees from other Oracle group companies upon the distribution and sale of computer software and hardware products and the provision of services in Canada, Latin American, Japan and Asia Pacific regions." The Company operated a branch in Singapore with a principal activity of providing consulting, training and support services to Japan and Asia Pacific regions."<sup>32</sup>

Oracle CAPAC Services UC had 2018 revenues of US\$4.362 billion, operating profit of US\$191 million and pre-tax profit of \$131 million. After deducting a tax charge of US\$179 million, the company reported a loss of US\$48 million. However, the company paid a dividend of \$511 million to Oracle Global Partners. No tax was paid in Ireland.<sup>33</sup>

Oracle CAPAC Services UC received dividends from subsidiaries of only US\$610,000 in 2018 compared to over US\$323 million in 2017. The company directly held several holding companies, including Irish holding companies for Vietnam and Korea, a Hong Kong holding company and many global operating companies. The company also directly held 100% of Oracle New Zealand and NetSuite Australia Pty Ltd, Moat APAC Pty Ltd, and Dyn AU Pty Limited in Australia. Other Australian companies were held indirectly, including many "dormant" companies. The company also indirectly owned Oracle Singapore Holdings Pte Limited, another holding company in Singapore.<sup>34</sup>

The direct Irish owner of the top Australian company, OCAPAC NIH1 Company UC, reported no dividend income or other economic activity in the 2018 financial year and recorded a loss of US\$36.4 million in 2017. The company's entire 2017 income was from a dividend of US\$265.3 million "from

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<sup>28</sup> Ibid., 9.

<sup>29</sup> Ibid., 9.

<sup>30</sup> Ibid., 9.

<sup>31</sup> Ibid., 9-10.

<sup>32</sup> Ibid., 10.

<sup>33</sup> Ibid., 10.

<sup>34</sup> Ibid., 10.

the Company's wholly owned subsidiary, Oracle Consolidation Australia Pty Limited, which was subsequently paid directly to the Company's immediate parent, Oracle CAPAC Services Unlimited Company." No tax was paid in 2017 or 2018.<sup>35</sup>

According to the financial statements of Oracle Corporation Australia Pty Ltd, the primary operating company in Australia, revenue was \$1.119 billion, but the loss before income tax was \$3.7 million and income tax expense of \$4.5 million drove the net loss down to \$8.2 million. The cash flow statement showed income taxes paid of nearly \$2.3 million.<sup>36</sup>

Losses on Australian operations appear to have been driven by large offshore related party transactions for which there was very limited disclosure. The cost of products, not including other expenses that were with related parties, was \$454.4 million. Related party transactions totalled over \$773.2 million, including \$478.1 million in "sub-license fee and hardware support fee". The related party transactions did not include an outstanding balance due at the end of the reporting period of \$196.7 million to OCAPAC Service Ireland.<sup>37</sup>

The head of Oracle's tax consolidated group in Australia is an entity called Vantive Australia Pty Ltd. ASIC records show this entity is directly owned by Oracle Systems Corporation. While the address provided is the Oracle corporate headquarters in California, this entity is incorporated in Delaware. It is unclear why this entity has a separate ownership structure, possibly to generate foreign tax credits to offset US income tax payments.<sup>38</sup>

The 2018 financial statements of the two Australian holding companies contained limited information. The notes to the financial statements of Oracle Consolidation Australia Pty Ltd did show current liabilities of \$136.7 million, which included a \$90 million loan payable to OCAPAC Research Company in Ireland. "Cumulative interest payable on the loan amounted to \$46,543,412 at 31 May 2018. This loan is repayable on demand." This Irish company was also registered in the Isle of Man.<sup>39</sup>

The only mention of Australia in Oracle's 2018 annual report (10-K) was related to audits by tax authorities. The filing stated that Oracle is "under audit by the IRS and various other domestic and foreign tax authorities with regards to income tax and indirect tax matters and are involved in various challenges and litigation in a number of countries, including, in particular, Australia, Brazil, Canada, India, Indonesia, Korea, Mexico, Spain and the United Kingdom, where the amounts under controversy are significant."<sup>40</sup>

The most significant issues that were being examined by federal and state tax authorities in the US included "deductibility of certain royalty payments, transfer pricing, extraterritorial income exemptions, domestic production activity, foreign tax credits, and research and development credits taken." The annual report also stated that "intercompany transfer pricing has been and is currently being reviewed by the IRS and by foreign tax jurisdictions and will likely be subject to additional audits in the future. ... In recent periods, transfer pricing audits in many foreign jurisdictions have become increasingly contentious. ...our provision for income taxes could be adversely affected by

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<sup>35</sup> Ibid., 10.

<sup>36</sup> Ibid., 10.

<sup>37</sup> Ibid., 10-11.

<sup>38</sup> Ibid., 11.

<sup>39</sup> Ibid., 11.

<sup>40</sup> Ibid., 11.

shifts of earnings from jurisdictions or regimes that have relatively lower statutory tax rates to those in which the rates are relatively higher.”<sup>41</sup>

In 2017, the Korean government imposed a charge of US\$276 million for alleged tax evasion after conducting a tax audit of the company for four months from July 2014. The audit found that US\$272 million of taxes over seven years had been evaded “by taking advantage of a tax haven abroad.” Software licence fees were sent to Ireland, presumably through the same structures that own both the Australian and Korean businesses.<sup>42</sup>

The 2018 financial statements for Oracle Corporation Australia Pty Ltd reported that in May 2018, “the head of the Australian tax consolidate[d] group of which the Company is a member was issued amended income tax assessments (totalling \$306.2m in primary tax, withholding tax, penalties and interest) by the Australian Taxation Office (ATO) regarding the historical treatment of certain transfer pricing positions. In accordance with ATO practice, the Company entered into a payment arrangement and made a partial payment (consisting of \$137.4m) for these amended income tax assessments in June 2018.” The company contested the amended assessments “and remains in dialogue with the ATO with a view to resolving this matter.”<sup>43</sup>

Given that the tax dispute is over \$300 million and a statutory tax rate of 30%, the dispute may involve the shifting offshore of over \$1 billion in profits.<sup>44</sup>

## Accenture

Accenture plc is publicly listed in the US but incorporated in Ireland. Accenture is a major government contractor and received over \$3.9 billion in federal contracts between 2017 and 2019, including \$264 million in 2019. Accenture's primary Australian company, Accenture Australia Holdings Pty Ltd, is owned by Accenture Australia Holdings BV in the Netherlands. A search of the Dutch company registry shows that Accenture Australia Holding BV is owned through Accenture Holdings BV and Accenture International BV, both in the Netherlands, which is, in turn, owned by Accenture Global Holdings Limited in Ireland. Very little information was available from Dutch or Irish filings of these entities.<sup>45</sup>

Globally, Accenture reported operating margins of 14.8% and 13.3% in 2018 and 2017, compared to Australian margins averaging under 7.4% over the last five years. Accenture's Australian margins had declined every year to 4.9% in 2016/17 and rose slightly to 5.2% in 2017/18. In 2018, Accenture's massive related party transactions of nearly \$1.1 billion may have facilitated the shifting of profits from Australia to tax havens, primarily the Netherlands and Ireland.<sup>46</sup>

Globally, Accenture was previously owned through Bermuda but, in the face of criticism over tax avoidance, switched to being incorporated in Ireland in 2009. Besides large numbers of Irish and Dutch subsidiaries, Accenture continued to have subsidiaries in other secrecy jurisdictions and tax havens, including Gibraltar, Hong Kong, Luxembourg, Mauritius, Singapore and Switzerland.<sup>47</sup>

The *Financial Times* reported in 2018 that a probe by British tax authorities covering an eight-year period and “related to a transfer pricing inquiry of routine transactions” resulted in a £77 million

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<sup>41</sup> Ibid., 11.

<sup>42</sup> Ibid., 11.

<sup>43</sup> Ibid., 11-12.

<sup>44</sup> Ibid., 12.

<sup>45</sup> Ibid., 13.

<sup>46</sup> Ibid., 13

<sup>47</sup> Ibid., 13.

payment. The paper report that the "tax charge is the latest in a series of tax-related controversies for Accenture", which was spun out of Arthur Andersen (Enron's auditor) in 1989. In 2017 Accenture paid £150 million to settle a tax dispute with Swiss authorities related to the "treatment of an intercompany transfer of intellectual property", which had been exposed through the Lux Leaks.<sup>48</sup>

The Australian entity's 2018 financial statements stated that Accenture Australia group of companies provided "IT Management Consulting and Outsourcing services in Australia" and that "Accenture Australia Holdings Pty Ltd also serves as the operating entity for certain Government contracts." The company reported a profit of \$55 million in 2018, down from \$56 million in 2017.<sup>49</sup>

Total revenue was \$2.120 billion in 2018, up from \$1.807 billion in 2017. Accenture's taxable profits were reduced in Australia by a plethora of large offshore related party transactions (costs) with very limited disclosure. In 2018, these included:<sup>50</sup>

- \$576.2 million for the purchase of consulting services;
- \$156.1 million in royalty expense;
- \$155.1 million in payables outstanding;
- \$96.8 million in international service expenses;
- \$56.6 million in proceeds of borrowings;
- \$11.8 million in interest expense;
- \$8.7 million in repayment of borrowings; and
- \$8.0 million in other service agreement expenses.

Collectively, these offshore-related party costs totalled over \$1.061 billion and were nearly half of the revenue of \$2.120 billion. The pre-tax profits of \$77.6 million and income tax expense of \$22.6 million declared in Australia were minimal in comparison to these massive offshore-related party payments.<sup>51</sup>

The finance payments may be in relation to a loan of \$347.8 million to Accenture Finance Limited, which other company documents revealed was in Ireland. In 2017 this Irish company, which had a book value of €30.9 billion, was (according to Luxembourg financial statements) owned by Accenture International S.a.r.l. in Luxembourg. This Luxembourg company was later transferred to the Netherlands, Accenture International BV, and was part of the ownership structure of the Australian business.<sup>52</sup>

Accenture's New Zealand filings provide more details on offshore-related party transactions than Australian filings. The 2018 annual financial statements of Accenture NZ Limited revealed that royalty charges were paid to Accenture Global Services Ltd in Ireland and that international service expense "is coordinated and settled through Accenture Participation BV" in the Netherlands.<sup>53</sup>

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<sup>48</sup> Ibid., 13.

<sup>49</sup> Ibid., 13.

<sup>50</sup> Ibid., 13-14.

<sup>51</sup> Ibid., 14.

<sup>52</sup> Ibid., 14.

<sup>53</sup> Ibid., 14.

The 2018 financial statements for Accenture Australia Holdings Pty Ltd reported previous share issues and repayment of debt to the previous “parent company Accenture Australia APS.” In 2009, all shares in the Australian entity “were transferred for a total of \$1,024,000,000 to Accenture Australia Holding BV” (p.29). It appears that this was part of the broader global restructure moving incorporation from Bermuda to Ireland.<sup>54</sup>

Accenture Australia Holdings ApS was a Danish company. Its 2009 financial statements reported that it was owned by Accenture International SARL in Luxembourg, and the ultimate parent company was Accenture Ltd in Bermuda. The previous Accenture Australia corporate structure also referred to in the notes of Accenture Australia Holdings Pty Ltd’s 2018 financial statements, involved four companies incorporated in Bermuda, Accenture Australia Ltd., Accenture Australia (1) Ltd., Accenture Australia (2) Ltd. and Accenture Australia (3) Ltd.<sup>55</sup>

### Amazon

Amazon is a smaller and more recent government contractor but is another example of a significant federal contractor with an extensive record of [Australian and global tax avoidance](#). Despite Amazon’s clear record of tax avoidance, it appears to have been awarded contracts, including in 2019, totalling \$106 million. Contracts have been for "whole of government" federal contracts for cloud computing services. These contracts were not signed with any of Amazon's Australian companies but directly with Amazon Web Services, Inc. in the US. The address of this major Amazon subsidiary, like the parent company, is in Seattle, Washington, but both are incorporated in Delaware.<sup>56</sup>

It appears to be the pattern of Amazon’s business model in Australia, that payments are made directly to offshore entities, and some portion of that payment returns to Australian subsidiaries that actually provide services in Australia.<sup>57</sup>

The European Court of Justice has ruled that Amazon, using Luxembourg structures, avoided €250 million in European income taxes between 2006 and 2014. Amazon appealed the decision. Many European countries have now implemented revenue taxes on digital transactions specifically to tax Amazon and other major global tech giants who have easily avoided taxation under existing global tax rules. Like many other multinationals, Luxembourg was critical to Amazon’s global tax schemes. Amazon subsidiaries in Luxembourg charged fees to Amazon companies operating globally and reduced profits where they were earned and stashed them in Luxembourg where they avoid tax. Amazon had at least ten companies incorporated in Luxembourg. These companies have had, and may continue to have, direct transactions with Amazon's Australian businesses. The lack of disclosure in Amazon's Australian filings makes it difficult to determine how related party transactions, which dominate the business model, may function.<sup>58</sup>

### Bupa

Bupa was awarded a \$3.4 billion contract, the largest federal contract in 2019, to provide healthcare services to the Australian Defence Forces. This contract was awarded despite Bupa reaching a \$157 million settlement with the ATO. Bupa received annual commonwealth government payments for

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<sup>54</sup> Ibid., 14.

<sup>55</sup> Ibid., 14.

<sup>56</sup> Ibid., 15.

<sup>57</sup> Ibid., 15.

<sup>58</sup> Ibid., 15.

aged care services of nearly half a billion dollars. Bupa subcontracted \$1 billion of the 2019 ADF healthcare contract to Serco.<sup>59</sup>

Although Bupa is technically a UK-based mutual company and "not for profit", it looks and behaves like a multinational corporation with aggressive tax avoidance practices. Australia is, by far, Bupa's largest and most profitable global market. Bupa is Australia's largest health insurance company and the largest for-profit aged care provider. Bupa also has an expanding optical and dental business in Australia. Bupa beat out Medibank – which has a much better track record as an Australian taxpayer – to win the federal contract for medical exams for immigration and visa processing and for the \$3.4 billion contract for health services to Australian soldiers.<sup>60</sup>

Bupa has a track record of global tax avoidance in the UK and Spain and uses tax haven subsidiaries in global operations. Bupa is frequently before tax tribunals in the UK, has been under investigation by the Spanish tax authorities, and is subject to a European Union investigation concerning illegal state aid. Bupa's UK aged care facilities are owned through a Spanish subsidiary.<sup>61</sup>

According to the 2018 filing of Bupa Finance plc in the UK, which indirectly owns Bupa's Australian businesses, Bupa's tax haven subsidiaries included:<sup>62</sup>

- Amedex Insurance Company (Bermuda) Limited in Bermuda;
- Altai Investments Limited, Berkshire Group Limited and Dynamic People Group Limited in the British Virgin Islands;
- Bupa Malta Investments No. 1 Limited and Bupa Malta Investments No. 2 Limited in Gibraltar;
- Bupa Guernsey No 2 Limited, Bupa Holdings (Guernsey) Limited, Bupa LeaseCo Holdings Limited, Bupa LeaseCo. (Guernsey) Limited and UK Care No. 1 Limited in Guernsey;
- Bupa Holdings (Jersey) Limited in Jersey;
- Bupa Global Designated Activity Company, Hugh Bradley Limited, Oasis Healthcare Holdings Ireland Limited and Xeon Dental Service Limited in Ireland;
- Amedex Services Ltd. (St Kitts) in Saint Kitts and Nevis; Bupa Singapore Holdings Pte Ltd in Singapore; and
- dozens of companies in Hong Kong, including Great Options Limited, Marvellous Way Limited, Megafaith International Limited.

Many of the Hong Kong businesses appear to relate to the [Quality HealthCare](#) business, which operates in Hong Kong but is owned through Altai Investments Limited in the British Virgin Islands. The Jersey Companies Registry indicated that Bupa Holdings (Jersey) Limited was dissolved in September 2019. The final annual return of this company, received on 25 February 2019, indicated that it had shares valued at over \$202 million in New Zealand dollars. The Jersey filing contains very little other information. The two "Bupa Malta" companies in Guernsey, initially set up in Malta, were also closed in September 2019. The Irish subsidiary, Bupa Global Designated Activity Company, was also registered in the Netherlands. Bupa has had many subsidiaries in the Netherlands, which also seem to have been deregistered. Perhaps the settlement with the ATO and other investigations by global tax authorities have encouraged Bupa to reduce its global use of tax haven subsidiaries.<sup>63</sup>

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<sup>59</sup> Ibid., 17.

<sup>60</sup> Ibid., 17.

<sup>61</sup> Ibid., 17.

<sup>62</sup> Ibid., 17.

<sup>63</sup> Ibid., 17-18.

The UK filing also reported "provisions for penalties and associated costs of £21m relating to the in-principle agreement with the Australian Taxation Office", which contributed to raising "Bupa's [global] effective tax rate' to 34% from 21% in 2017. The filing also states that "to settle a number of disputed matters[,] ...Bupa will pay a total of approximately £88m to the ATO, reflecting taxes, interest, penalties and an offset for overpaid withholding tax, for the 2007 to 2018 years."<sup>64</sup>

Other examples and updates to these examples have been provided in a more recent [CICTAR submission](#) to a Senate Inquiry on "The current capability of the Australian Public Service (APS).<sup>65</sup> This submission also provided a breakdown of the substantial federal contracts awarded to these global IT giants, despite evidence of local and global records of aggressive tax avoidance.

At the request of the Senate Committee, a [supplemental submission](#) was made analysing tax avoidance by the largest labour-hire companies winning substantial federal contracts.<sup>66</sup> The extensive use of labour-hire in the federal government is a separate question, but it is worth noting that many of these federal contractors are facing class action lawsuits concerning wage theft. It is also worth noting that multiple entities, ultimately owned by the same foreign multinational parent, are competing for and winning tenders. The procurement process does not adequately provide for an evaluation of corporate ownership structures, which can undermine both competition and tax compliance.

We urge Treasury to examine these case studies to inform what reforms might be needed to improve tax compliance of federal contractors. The final report of the inquiry, issued in November 2021, included a recommendation that "where ICT contracts must be awarded to multinational corporations, at a minimum, the Australian Government must require those corporations to produce a copy of reporting under the Global Reporting Initiative Tax Standard, or implement the standard within one year."<sup>67</sup> We urge Treasury to consider a requirement to implement the GRI Tax standard as a condition of future contracts with any multinational corporations as part of this review. This could support and complement broader reforms being considered for multinational tax integrity.

In October, CICTAR will be launching a report on Microsoft's global tax avoidance, which also highlights evidence of tax avoidance in Australia and Microsoft's extensive federal contracts.

### **3. Do you consider businesses could benefit from using the STR to improve integrity in their supply chain and for supply chain management practices?**

The STR provides additional information that a business could use as part of their due diligence into corporations they are doing business with. However, the assurance that a STR provides would not replace the need for additional due diligence, including into the tax practices of the corporation in question. For example, a STR does not reveal that a corporation has been subject to a tax evasion or tax avoidance-related penalty in another jurisdiction. It does not highlight the risks that a corporation may have an extensive structure of subsidiaries in secrecy jurisdictions that have a high risk of being used for tax avoidance purposes.

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<sup>64</sup> Ibid., 18.

<sup>65</sup> <https://www.aph.gov.au/DocumentStore.ashx?id=2c95b644-bab7-4892-a82e-8a5ba0b64974&subId=705646>

<sup>66</sup> <https://www.aph.gov.au/DocumentStore.ashx?id=dec9d6ba-8bc5-46c6-b353-3cde147304&subId=705646>

<sup>67</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/CurrentAPSCapabilities/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/CurrentAPSCapabilities/Report)

## **5. Are the existing STR criteria appropriate and sufficient to meet the policy objectives of the Shadow Economy Procurement Connected Policy?**

The existing STR criteria are not sufficient to meet the policy objectives of the Shadow Economy PCP to:

- Reduce shadow economy behaviour by businesses involved in Government procurements contracts; and,
- Create a level playing field by eliminating competitors who can undercut their competition by not complying with key tax obligations.

The requirement to obtain an STR for tenders over \$4 million sets an important precedent, but the bar needs to be raised significantly in order to be effective in the policy goals.

## **6. Should businesses that have a greater impact on the policy objectives of the PCP be subject to additional criteria to obtain an STR?**

In addition to the STR, there should be a requirement to disclose if there have been or continue to be any significant disputes with the ATO or other foreign tax authorities within the last five years and whether or not those disputes have been resolved. The requirement should apply to the immediate entity seeking the contract as well as the broader corporate body. Details of the ownership structure of the tendering entity should be provided. For most entities with simple and rational ownership structures, this proposal would not present a significantly increased compliance burden. For some corporations with complex ownership structures and a track record of tax avoidance, it could be a deterrence to tender or an inducement to more responsible corporate behaviour.

Model language, as suggested, was used in a tender document from the Department of Home Affairs in relation to contracts for visa processing services in 2019.<sup>68</sup> This language was provided by the Department in [Question on Notice](#) to a Senate Inquiry.<sup>69</sup> The wholesale outsourcing of visa processing under this tender agreement was ultimately abandoned. Using this language, the two competing consortiums, involving Accenture and Oracle, would have likely been disqualified.<sup>70</sup> However, a revised tender related to a substantial part of this work was later awarded to Accenture.

The model language is provided below in full:

Section 4.12.1.1(c) of the published RFT states, "The Successful Tenderer must maintain an exemplary compliance record with the Australian Taxation Office in relation to the successful tendering entity (i.e., the SPV) and its other business affairs connected with Australia."

Clause 30.3 of the published Draft Agreement requires significant annual warranties from the Successful Tenderer in relation to the compliance with tax law, including that the Operator Group (i.e. the Operator and each of the Operator's Related Bodies Corporate):

- has complied with all obligations imposed on the Operator Group by any tax law;

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<sup>68</sup> Senate Inquiry on "Impact of changes to service delivery models on the administration and running of Government programs"; [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/ServiceDelivery](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/ServiceDelivery)

<sup>69</sup> <https://www.aph.gov.au/DocumentStore.ashx?id=94ab29b3-1ffa-485f-b865-41a1b4c5c91d>

<sup>70</sup> CICTAR's review of Oracle and Accenture tax avoidance was provided in a Question on Notice here: <https://www.aph.gov.au/DocumentStore.ashx?id=0226698e-8294-455e-9f29-5c42b528ad5f>

- has not in the last five years been the subject of any audit by or in dispute with, any tax authority;
- any contractors engaged by the Operator Group are not employees of the Operator Group for the purposes of any Law;
- is not involved in any audit or investigation of any of its tax returns or business operations or any dispute with any tax authority, and the Operator Group is not aware of any circumstances or event which may give rise to any such audit, investigation or dispute;
- has not entered into or been a party to any transaction which contravenes the anti-avoidance provisions, transfer pricing provisions or diverted profits tax provisions of any tax law;
- is not currently the beneficiary of any extension of time within which to file, lodge or submit any tax return or with respect to any tax assessment or any tax shortfall; and
- has not in the last five years been the subject of any audit by, or in dispute with, any tax authority.

We suggest language along these lines is used to require necessary information from any tenderer in addition to the existing requirement for an STR.

**7. Is the current \$4 m (GST inclusive) threshold appropriate? If not, what should it be?**

The submitting bodies will support the current threshold being lowered if it is assessed that there would be sufficient government resources to apply the policy in a meaningful way. In our view, meaningful application means that entities that have been engaged in shadow economy activities, including tax avoidance and tax evasion, are excluded or restricted from being able to win Commonwealth Government tenders.

The submitting bodies strongly oppose any increase in the current threshold to which the PCP applies.

**8. Are the current policy settings in the PCP appropriate and sufficient in the context of the policy goals, in respect of :**

- a. STR timeframes;**
- b. panel arrangements;**
- c. bids and trusts and partnerships;**
- d. the application to first-tier subcontractors only; and**
- e. new businesses and foreign tenderers?**

Strengthening the requirements to ensure federal contractors are following responsible tax practices should support the Government's objective to require that 20% of procurements by value are sourced from SMEs. The federal government's procurement can and should be used to leverage greater corporate responsibility and transparency across the broader market. In order to achieve these goals, the STR requirement should be maintained for businesses seeking to be part of a panel arrangement and not only when selected from a panel.

The application of the requirement for compliance with first-tier subcontractors should be maintained and extended beyond first-tier subcontractors if further subcontracts in the supply chain

are valued at over the \$4 million threshold. This may require reporting beyond the initial tender and would increase effectiveness and have a positive impact on the shadow economy.

The current requirements around sub-contracting allow for the need for satisfactory tax compliance behaviour to be circumvented. For example, Corporation A wants to use Corporation B as a subcontractor, but Corporation B has been involved in serious tax evasion in the last four years. So the directors of Corporation A set up Corporation C with nominee directors. The bid says that Corporation C, with a clean record, is the first-tier subcontractor and will comply with the process for a new company in the rules. Corporation C then subcontracts to Corporation B, and as a second-tier subcontractor, Corporation B does not need to provide a STR.

The current requirement for partners in partnerships to submit STRs is reasonable. Larger partnerships or trusts should not be provided with any exemptions.

For new businesses, the tax records of any businesses owned by the directors or owners in the past five years should be examined for the tax compliance history of those businesses. This is important to stop people from engaging in phoenix activity to allow them to have a clean slate to apply for government contracts when they have been responsible for the previous non-compliance with tax laws.

Additional requirements for foreign tenders are largely covered above but should be extended to a five-year record and must include disclosure of the ownership structure of the entity directly involved in the tender. Separate from tax compliance issues, there is a clear public interest need to understand the corporate structures and beneficial ownership of any entity that is awarded federal contracts.

It would be desirable that some checks are done to ensure that the statement by directors, partners, trustees or appropriate officers is accurate and truthful. If these people have engaged in criminal activity, then they may have little concern about lying to the Commonwealth Government to be able to bid for the government contract. The requirement not to have tax-related and/or criminal convictions in the last four years should apply to the directors, partners and trustees of the entity in addition to the entity itself. Otherwise, people who have been involved in criminal shadow economy activity can get around this process by simply setting up a new legal entity with no criminal record.

## **12. Are there any other changes to the PCR or STR applications process that should be made?**

The requirements should be extended beyond pure procurement. The federal government spends billions of dollars in financing the private provision of public services, including aged care, early childhood education and care, disability services and others. These services are not part of traditional procurement or tendering processes, but entities receiving significant amounts of annual federal funding should also be held to the same standards. Previous research by TJN-Aus and CICTAR has found significant evidence of tax avoidance by entities receiving hundreds of millions in annual federal funding in the care sector.

In addition to the current requirements under the PCP, the assessment of an entity having satisfactory tax compliance should include the risk rating assessed by the ATO under Practical Compliance Guide PCG 2017/4<sup>71</sup>, which relates to the level of risk a business poses in relation to its tax arrangements around cross-border related party loans.

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<https://www.ato.gov.au/law/view/document?docid=COG/PCG20174/NAT/ATO/00001&PiT=20201210000001>

Consideration of similar ATO risk assessments based on objective criteria should also be included in considering if a business has a 'satisfactory tax record'.

The vast majority of businesses are able to adjust their behaviours to reduce ATO risk ratings, so including these is likely to assist in modifying the tax compliance behaviour of companies seeking to bid for Commonwealth Government contracts.

A satisfactory tax record should also take into account compliance with the Taxable Payment Reporting System for those businesses that this is relevant for (cleaning and security businesses).

An unsatisfactory tax record should include the following additional concerns:

- A conviction for a tax-related offence in the last five years, including any offence related to wage theft (such as under the *Fair Work Act*), even if the tax evasion part of the criminal behaviour was not prosecuted. In the latter case, for example, a business might have been prosecuted and convicted for deliberate underpayment of wages, but the tax evasion activity may not have been prosecuted. In such a case, the business, for example, may have lied to the ATO about the number of employees it has (saying it has fewer employees than it actually does) to hide the wage theft and be able to justify paying a lower level of tax from its employees' wages than it would be required to forward to the ATO were it complying with the legal pay rates of its employees.
- Having been non-compliant with a directions notice on tax matters in the last four years.
- Having been subject to administrative penalties in relation to tax matters greater than \$10,000 in the last four years.
- Having failed to pay their tax liabilities of \$10,000 or greater on time or as agreed with the ATO under a payment plan in the last four years.
- Having been non-compliance with filling out the Single Touch Payroll if they are of a size required to do so, in the last four years.
- Repeatedly failing to report transactions in the time period required by the ATO.
- Having failed to lodge financial accounts with ASIC in any of the last four years when having been required to do so. The relation between a business' accounts and its tax behaviour is important, as demonstrated by the announcement in the 2018-2019 budget that companies would be required to align their asset evaluations between what they include in their accounts and what they claim is the evaluation for tax purposes. This was to address the behaviour where companies were using inflated asset evaluations to be able to load themselves up with greater cross-border related party debt and stay below the thin capitalisation threshold.
- Having been convicted of a tax-related offence in a foreign jurisdiction in the last four years.

### **13. Do you have any other feedback on the application of the PCP?**

The submitting bodies believe that restrictions on entities to tender for Commonwealth Government contracts should be applied to other serious criminal activity that an entity has committed or has been reckless about being associated with. Such areas would include corruption, bribery, money laundering and modern slavery.

The World Bank Group has a process to exclude from procurement processes any company that has engaged in fraud or corruption. Details of this are set out in *The World Bank Group's Sanctions Regime: Information Note*<sup>72</sup>.

Sanctions are determined by internal Bank processes, which have a number of layers and seek to apply general principles of fairness and due process (including appeals to a higher level within the Bank).

The Bank applies five levels of sanctions:

- Debarment with conditional release. The company will be debarred for a minimum of three years, after which it may be released if it has complied with certain defined conditions.
- Debarment for a fixed term. The level of this sanction can vary significantly. If, for example, the firm has put in place a corporate compliance program and the culpable employees have been terminated, the debarment can be for a relatively short period, such as a year. On the other hand, if there is no prospect that the firm will mend its ways, the debarment can be permanent.
- Conditional non-debarment. The firm is not debarred, provided that it complies with certain conditions within a specified time. This is sometimes applied to parents and affiliates that have not themselves engaged in misconduct.
- Letter of reprimand. This is applied where other sanctions are considered disproportionate to the offence. Once again, it can be applied to parents and affiliates.
- Restitution. The firm is required to disgorge illicit profits or remedy the harm arising from its actions.

The Bank can also impose an early temporary suspension during the investigation phase.

A debarment can arise from a Bank process running its full course, or it can be the outcome of a settlement with the firm before sanctions proceedings have been finalised. The positive about the World Bank processes is that where a corporation has engaged in egregious criminal activity, its prosecution or settlement of the matter does not automatically erase a firm's possibility of being excluded from tendering for a period. It sends a signal that reckless or wilful engagement in criminal activity will have a lasting impact on a corporation and give advantages to businesses that operate within the law.

The World Bank Group has a cross-debarment agreement with four other MDBs: the African Development Bank; the Asian Development Bank; the European Bank for Reconstruction and Development; and the Inter-American Development Bank Group. A firm debarred by one of these MDBs is automatically debarred by the others.

The World Bank debarment process has a number of useful features:

- Sanctions can be calibrated according to the level of non-compliance.
- Cross-debarment with four other major Multilateral Development Banks maximises the effectiveness of any sanction. A non-compliant company is severely constrained in seeking work on multilateral-financed projects.
- The power to sanction parents and affiliates closes a potential loophole. Companies subject to sanctions could otherwise simply transfer their activities to related companies, which

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<sup>72</sup> Available at [https://www.worldbank.org/content/dam/documents/sanctions/other-documents/osd/The\\_World\\_Bank\\_Group\\_Sanctions\\_Regime.pdf](https://www.worldbank.org/content/dam/documents/sanctions/other-documents/osd/The_World_Bank_Group_Sanctions_Regime.pdf) accessed 22 September 2022.

might even share all directors and employees. That would make the sanction largely ineffective.

- The ability to set conditions (for non-debarment or for renewed admission to procurement processes) allows the Bank to provide incentives for improved behaviour.

The World Bank's debarment process appears to have been meaningfully applied. The current list of debarred entities and individuals is made public on the World Bank website.<sup>73</sup>

The NSW Government has a debarment process through the *Crimes (Serious Crime Prevention Orders) Act 2016*. The Act enables the NSW District or Supreme Courts to order "... such prohibitions, restrictions, requirements and other provisions as the court considers appropriate for the purpose of protecting the public by preventing, restriction or disrupting involvement by the person in serious crime related activities." To make an order, the appropriate court must be satisfied of two facts:<sup>74</sup>

1. the person has been convicted of a serious criminal offence, 'engaged' in serious crime-related activity or was 'involved' in serious crime-related activity (whether or not the person has been convicted); and,
2. there are reasonable grounds to believe the order would protect the public by preventing, restricting or disrupting the person's involvement in serious crime-related activities.

It has been argued that fines, even large ones, impose a financial impact on earnings and balance sheets. However, they are a blunt sanction in that they don't automatically impact field personnel, which is where corporate integrity offences most often occur. The advantages of debarment processes are that they impact field personnel by disrupting sales opportunities, income streams, revenue models and compensation based on incentives. Debarment regimes are argued to encourage self-reporting and rectification to avoid debarment. It is further argued that debarment regimes are designed to facilitate a shift toward cultural integrity rather than to punish.<sup>75</sup>

Another example of using government procurement in an attempt to modify business behaviour on an issue of corporate criminal behaviour is the United States' Executive Order (EO) 13126 of 1999, which aims to ensure that US federal agencies do not procure goods made by forced or indentured child labour.

Under EO13126<sup>76</sup>, the US Department of Labor (DOL) consults with the Department of Homeland Security (DHS) and Department of State (DOS) to create a list of products, identified by country, that may be the result of forced child labour. Federal contractors who supply products on this list must certify that they have attempted to determine whether the products are the result of forced child labour. Sanctions for non-compliance range from termination of the contract, suspension of the business or debarment of the business for a period of up to three years.

The first list was published in 2001 and contained 11 products. The current list contains 55 products from 27 countries.<sup>77</sup>

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<sup>73</sup> <https://www.worldbank.org/en/projects-operations/procurement/debarred-firms>

<sup>74</sup> Olivia Dixon, 'The Efficacy of Australia Adopting a Debarment Regime in Public Procurement', *Federal Law Review* **Vol 49(1)**, (2021), 132.

<sup>75</sup> *Ibid.*, 141

<sup>76</sup> General information on EO13126 in this submission is drawn from the US Department of Labor publication *FREQUENTLY ASKED QUESTIONS: Executive Order 13126 of 1999*, available at [https://www.dol.gov/ilab/reports/pdf/EOFAQS\\_2015.pdf](https://www.dol.gov/ilab/reports/pdf/EOFAQS_2015.pdf) accessed 6 June 2018.

<sup>77</sup> The list is available at <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-products-print> accessed 22 September 2022.

EO13126 has assisted in making businesses more focused on taking steps to ensure their supply chains are free of forced child labour.

Similarly, in September 2012, President Barack Obama issued Executive Order 13627- *Strengthening Protections Against Trafficking In Persons In Federal Contracts*<sup>78</sup> which required updates to the Federal Acquisition Regulation and the *Ending Trafficking in Government Contracting Act*. As a result of the Executive Order, measures were introduced to combat slavery in federal procurement. These were developed in consultation with federal contractors, academia, NGOs and other stakeholders.<sup>79</sup>

The Executive Order requires US federal contractors with public contracts in excess of US\$500 million to take steps to ensure that there is no slavery within their supply chains. Contractors are prohibited from charging employees recruitment fees or using misleading or fraudulent recruitment practices. Part 52.222-50 of the Solicitation Provisions and Contract Clauses require certain contractors to develop and maintain a compliance plan and to certify that, to the best of their knowledge, they have not engaged in trafficking-related activities.<sup>80</sup>

Thank you for the opportunity to comment on this overdue review of the Shadow Economy Procurement Policy. Please let us know if you have any questions or require further information.

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<sup>78</sup> Available at: <https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe>. Accessed on 30 March 2017.

<sup>79</sup> Available at: <https://obamawhitehouse.archives.gov/blog/2015/01/29/combating-human-trafficking-supply-chains>. Accessed on 30 March 2017.

<sup>80</sup> <https://www.acquisition.gov/far/html/FARTOCP52.html>

### **Background on the Centre for International Corporate Tax Accountability & Research (CICTAR)**

CICTAR is a global corporate tax research centre that produces information and analysis to untangle the corporate tax web. The Centre is a collective resource for workers and the wider public to understand how multinational tax policy and practice affect their daily lives. CICTAR's work supports public participation in the tax debate so that everybody can take part in decision-making that affects their communities.

For more information, visit the CICTAR website here: <https://cictar.org/>

## **Background on the Tax Justice Network Australia**

The Tax Justice Network Australia (TJN-Aus) is the Australian branch of the Tax Justice Network (TJN) and the Global Alliance for Tax Justice. TJN is an independent organisation launched in the British Houses of Parliament in March 2003. It is dedicated to high-level research, analysis and advocacy in the field of tax and regulation. TJN works to map, analyse and explain the role of taxation and the harmful impacts of tax evasion, tax avoidance, tax competition and tax havens. TJN's objective is to encourage reform at the global and national levels.

The Tax Justice Network aims to:

- (a) promote sustainable finance for development;
- (b) promote international co-operation on tax regulation and tax-related crimes;
- (c) oppose tax havens;
- (d) promote progressive and equitable taxation;
- (e) promote corporate responsibility and accountability; and
- (f) promote tax compliance and a culture of responsibility.

In Australia, the current members of TJN-Aus are:

- ActionAid Australia
- Aid/Watch
- Anglican Overseas Aid
- Australian Council for International Development (ACFID)
- Australian Council of Social Service (ACOSS)
- Australian Council of Trade Unions (ACTU)
- Australian Education Union (AEU)
- Australian Manufacturing Workers Union (AMWU)
- Australian Nursing & Midwifery Federation (ANMF)
- Australian Services Union (ASU)
- Australian Workers Union, Victorian Branch (AWU)
- Baptist World Aid
- Caritas Australia
- Centre for International Corporate Tax Accountability & Research (CICTAR)
- Community and Public Service Union (CPSU)
- Electrical Trades Union, Victorian Branch (ETU)
- Evatt Foundation
- Friends of the Earth (FoE)
- GetUp!
- Greenpeace Australia Pacific
- International Transport Workers Federation (ITF)
- Jubilee Australia
- Maritime Union of Australia (MUA)
- National Tertiary Education Union (NTEU)
- New South Wales Nurses and Midwives' Association (NSWMWA)
- Oaktree Foundation
- Oxfam Australia
- Save the Children Australia

- Save Our Schools
- SEARCH Foundation
- SJ around the Bay
- Social Policy Connections
- TEAR Australia
- The Australia Institute
- Union Aid Abroad – APHEDA
- United Workers’ Union (UWU)
- Uniting Church in Australia, Synod of Victoria and Tasmania
- UnitingWorld
- Victorian Trades Hall Council
- World Vision Australia