A fairer tax system

Labor stands for a fairer tax system for Australia. This means a tax system that is progressive and that only provides incentives where they are fair and serve a clear purpose that benefits society as a whole. That's why we've introduced policies that will reform negative gearing and the capital gains tax to ensure housing affordability and ensure multinationals pay their fair share of tax and more fairly target superannuation concessions.

In addition to our current suite of tax measures, we are also introducing two new packages of measures that will build on the previous policies that Labor has announced:

- Opposing tax increases for low and middle income Australians, and not supporting tax cuts for millionaires
- A cap on the amount that may be deducted to manage the tax affairs of large businesses and individuals.
- A tax haven package that will increase transparency on the use of tax havens by corporations and high net-worth individuals.

Capping deductions for managing tax affairs

The case for change

- There were 48 people in 2014-15 who earned more than $1 million but paid zero tax. Nineteen of these people claimed an average of $1.1 million in deductions for the use of the lawyers and tax advisors that helped them pay no tax.
- The combined earnings of these 48 people were over $118 million for 2014-15 alone.
- It's not just millionaires, either. There are 473,000 people who paid no tax in 2014-15 who still racked up $328 million in total deductions for managing their tax affairs.
- This is a rort. Allowing high-income individuals to reduce their taxable income to zero and then charging the taxpayer for the privilege is the sort of unfairness Australians are sick of.
- The vast majority of Australians do the right thing.
- In 2014-15, 6.2 million Australians claimed the deduction for the cost of managing their tax affairs. The average deduction was $378.
- Labor's change will only affect people who claim more than $3000 for this deduction. This reform will affect less than one per cent of taxpayers.
- Tax deductions should be directed in a manner that is fair, equitable, and do not unreasonably burden the budget.
- Labor understands there is a role for tax deductions in managing tax affairs. However, should an individual choose to pay an accountant more than a reasonable cost to manage their tax affairs, that extra expense will be borne solely by them, not in effect subsidised by tax payers.

- They individuals may have very complex tax affairs as individuals and are predominantly high income earners.

What is Labor's proposal? How will it work? How will it drive growth or improve fairness?

- This measure delivers $1.8 billion to the budget to 2028-29 for priority issues such as Medicare, schools and budget repair.
- "Managing tax affairs" expenses beyond the $3,000 will not be deductible.
- The proposal would have effect from 1 July 2019
- This deduction and cap affects individuals only, and other business-like structures such as trusts and partnerships that are taxed as individuals, and not companies.
- A carve-out is included for individual small businesses with positive business income and annual turnover up to $2 million.
- This measure only affects a small percentage (less than one per cent) of taxpayers, approximately 90,000 in total.
- The total value of deductions claimed for managing tax affairs was $2.34 billion in 2014-15. 2,458 individuals claimed more than $25,000 each for managing tax affairs.
- The 'managing tax affairs' deduction covers expenses relating to preparing and lodging tax returns and activity statements include the costs of lodging tax returns through a registered tax agent, obtaining tax advice from a recognised tax adviser, appealing to the Administrative Appeals Tribunal or courts in relation to tax affairs, interest charges by the ATO, and dealing with the ATO about tax affairs.

Labor’s Tax Haven Transparency Package

Labor’s comprehensive measures will radically increase transparency on the use of tax havens by corporations and high net-worth individuals.

The case for change

- Tax havens threaten Australia’s tax base. When tax revenue gets lost to tax havens, Australians ultimately have to pay higher taxes or suffer cuts to vital services. For example, the Cayman Islands have been criticised by the OECD and by tax commissioner Chris Jordan for their excessive secrecy. They have more companies than people. A single building in the Caymans – Ugland House – is home to over 18,000 companies.
- As Tax Commissioner Chris Jordan recently said in a speech to the Tax Institute: ‘Many of these [tax] matters involve deliberate tax evasion, *often using overseas tax havens* or complex corporate structures to avoid detection and recovery.’
- The shockwaves from the *Panama Papers* and similar scandals involving corporations and high net-worth individuals aggressively minimising their tax are being felt around the world. Other Governments have been jolted into action on transparency measures since the public outcry over the Panama Papers. The Turnbull Government has done virtually nothing. With rising inequality and rising government debt, the time for acting on tax havens has come.
- Tax havens have been estimated to hold $7.5 trillion of the world’s financial wealth, costing the global economy $200 billion in lost taxes every year.
- Tackling aggressive tax minimisation requires greater public oversight. For a long time, civil society and tax fairness campaigners have been arguing for greater transparency.
- Labor remains committed to transparency measures and has worked with stakeholders on appropriate measures to ensure multinational tax dodgers have nowhere to hide. As Justice Louis Brandeis put it, sunlight is the best disinfectant.
- The Government has been backtracking on a beneficial ownership registry (which would identify the ultimate owners that sit behind shell companies). After promising unequivocally to act on this critical transparency measure, they are now moving slowly, and exempting trusts from consultation on a register that may not be publicly accessible.
- With the Financial Action Taskforce having found Australia to be “completely non-compliant” in some aspects of transparency, the need for action is urgent.

What is Labor’s proposal? How will it drive growth or improve fairness?

Labor has eight proposals in its transparency package:

Tax Haven Transparency

1. Public reporting of country-by-country reports. High-level tax information about where and how much tax was paid by large corporations (over $1 billion in global revenue) will be released publicly.
2. Whistle-blower protection and incentive/rewards - Provide protection for whistle-blowers who report on entities evading tax to the Australian Taxation Office. Individuals who highlight tax evasion collect a share of the penalty collected
3. Mandatory reporting of 'material tax risk' (tax haven exposure) to shareholders - Companies would be required to disclose to shareholders as a 'Material Tax Risk' if the company is doing business in an international material tax risk jurisdiction (i.e. a known or suspected tax haven). There is no current legal requirement to do so currently.
4. Public reporting of AUSTRAC data - require AUSTRAC to publicly release International Funds Transfer Instructions (IFTI) data for every calendar year (or, if more practical, financial year).
5. Disclosure of 'material tax risk' for government tenders - amend Government procurement process requirements such that the Australian Government tender process requires all companies to state their country of domicile for tax purposes
6. Develop guidelines for tax haven investment by superannuation funds - task the ATO (in collaboration with ASIC, and APRA re: self-managed super funds) to create/review guidelines for responsible investment for superannuation funds.
7. Publicly accessible registry of the beneficial ownership of Australian legal entities – *re-announcement of election policy*. Fully implement the G20 principles Australia signed in 2014 and ensure transparency over how ultimately owns a company, rather than just who is listed on company paper-work.
8. ATO disclosure of settlements and reporting of aggressive tax minimisation – high-level reporting in the ATO's annual report on how many settlements were achieved per financial year and associated data.

How will it work? How does the policy put people first?

Tax Haven Transparency

Public reporting of country-by-country reports:

- The proposal would require the Australian Taxation Office to make country-by-country reports (excerpts) publicly accessible. This would be high level data on how much tax is paid in jurisdictions the firm operates, the number of employees, and related material.
- The EU is implementing this measure. This measure was also recommended by the Senate Economics References Committee report *Corporate Tax Avoidance - Part I You cannot tax what you cannot see*.
- Australia has implemented laws requiring multinational national corporations with revenues over $1 billion to have to submit country-by-country reports. There is no requirement for these reports to be made public.

- Public disclosure would make country-by-country reporting much more useful to developing countries, other businesses, shareholders, civil society, academics and journalists.
- The number of entities affected by the proposal is not currently available because information on multinational companies' global revenue has not yet been fully reported to the ATO. According to the 2014-15 Report of Entity Tax Information, there are approximately 300 companies that had total Australian income in excess of $1 billion.

<u>Whistle-blower protection and incentive/rewards:</u>

- Individuals who highlight tax avoidance behaviour, tax evasion, aggressive tax planning, and other tax issues, can collect a share of the penalty collected (capped at $250,000 or 1 per cent of the penalty figure, whichever is higher). This share would be taxable as ordinary income.
- This goes far beyond the Government's proposal announced in the 2016-17 Budget (Budget Paper No. 2, page 32)
- The US and UK have existing reward/incentive measures in their tax enforcement. The UK program has been prominent in recent years, in part due to growing community concerns about tax avoidance.
- This informant share would be taxable as ordinary income (comparable to US IRS ruling). Court action would be taken by the ATO, rather than the individual (as is the case in the US *False Claims Act*). This would reduce speculative claims.
- This extends further to those who report tax information from the private and non-for-profit sector to the ATO. Anyone who takes adverse action against whistleblowers will face 2 years jail and an $18,000 fine, and whistleblowers will also be able to take civil action for reinstatement and compensation.
- The ATO would develop detailed criteria for a test regarding the contribution of an individual leading to court action. Essentially, the test would be whether court action was undertaken due to the information identified by an individual.
- Whistleblower culpability in tax avoidance schemes would be considered in determining what rewards are appropriate.

<u>Mandatory reporting of 'material tax risk' (tax haven exposure) to shareholders</u> :

- The proposal would amend the *Corporations Act 2001* (the Act) to require disclosure of dealings in 'international material tax risk jurisdictions' to shareholders.
- The Australian Tax Office would issue guidance on the types of activity, and detail, businesses are required to disclose.
- A list of these jurisdictions would be maintained by the ATO and issued as a guidance note to inform companies' corporate governance regimes. It would be similar to the design of the European Union's 'blacklist'.
- (As an example, an earlier suggested list of blacklisted countries was as follows: Andorra, Liechtenstein, Guernsey, Monaco, Mauritius, Liberia, Seychelles, Brunei, Hong Kong, Maldives, Cook Islands, Nauru, Niue, Marshall Islands, Vanuatu, Anguilla, Antigua and Barbuda, Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands,

Grenada, Montserrat, Panama, St Vincent and the Grenadines, St Kitts and Nevis, Turks and Caicos, US Virgin Islands)

Public reporting of AUSTRAC data:

- The proposal would require AUSTRAC to publicly release International Funds Transfer Instructions (IFTI) data for every calendar year (or, if more practical, financial year).
- The data would be aggregate totals of funds transferred from Australia to overseas destinations. The type of information has been released under Freedom of Information . This would show aggregated cash flows to overseas destinations, including low-tax and non-compliant jurisdictions (tax havens).

Disclosure of 'material tax risk' for government tenders:

- This would implement Recommendation 8 of the Senate Economics Reference Committee report *Corporate Tax Avoidance Part 1 – You cannot tax what you cannot see*.
- The 2014 *Commonwealth Procurement Rules* (CPRs) are issued by the Finance Minister under s105B(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
- Two options exist:
    i. Commit to having a Labor Finance Minister, if elected, amending the written instrument (CPRs) to include this.
    ii. Legislate by amendment to the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
- The measure would not preclude any company from tendering, nor change the 'value for money' criteria of procurement. The tender-value threshold for this measure would be for government purchases above $200,000.

Develop guidelines for tax haven investment by superannuation funds:

- Some Australian superannuation firms are known to invest in companies incorporated in tax havens.
- This would not seek to outlaw such investment (nor presume any illegality), but rather ensure funds are transparent about their dealings in such jurisdictions and what those investments are.

Publicly accessible registry of the beneficial ownership of Australian legal entities:

- Australia has committed to reforms through the G20 high-level principles on beneficial ownership transparency. These reform principles were agreed to at the G20 summit in Brisbane in 2014 and are based on guidance from the Financial Action Task Force.
- They are designed to ensure transparency over how ultimately owns a company, rather than just who is listed on company paper-work.

- A recent report by Transparency International rated Australia's overall beneficial ownership rules as 'weak'.
- The Financial Action Taskforce found Australia's beneficial ownership regime to be 'partly compliant' regarding companies, and "completely non-compliant" regarding legal arrangement (trusts).
- This will be achieved by establishing a publicly accessible central registry of the beneficial ownership of companies, trusts and other corporate structures.
- The proposal requires the Australian Securities and Investments Commission to establish a publicly accessible central registry of the beneficial ownership of companies, trusts and other corporate structures.

<u>ATO disclosure of settlements and reporting of aggressive tax minimisation</u>:

- The ATO would include in its annual report high level data about the value and number of settlements above a value of $50 million.
- This would be broad information; about an estimated 8 large settlements per year.

Labor's record

- The previous Labor Government legislated multiple measures closing multinational tax loopholes and increasing transparency. All were opposed by the Liberals.

What the Coalition will do / has done

- The Coalition has walked back from public commitments to greater transparency, often missing its own announced deadlines.
- The Coalition has conceded partial measures including the Diverted Profits Tax that raises one-eighth of the revenue Labor's debt-deduction pack raises.
- The centrepiece of the 2016 Budget was a 'Tax Avoidance Taskforce' consisting primarily of ongoing programs plus some additional resources. This followed years of budget cuts to the Tax Office that saw over 3,000 jobs lost, and undermining the ATO's auditing capacity.