Submission

Tax White Paper – Discussion Paper

Overview

BHP Billiton is a leading diversified resources company. We have a global footprint with a core portfolio of 19 assets in eight countries across three continents. We are among the world's top producers of major commodities including coal, copper, iron ore, petroleum, nickel and uranium. Our operations supply customers to meet the resource demands of developed and emerging economies around the world. We are proud to be an Australian company, with a long history dating back to 1885, and headquarters that have always been in Australia.

BHP Billiton supports the need for comprehensive tax reform as a critical element in ensuring Australia's future prosperity. As set out in the Discussion Paper, Australia is facing a number of challenges in the coming years. In the future, Australia will not be able to rely on unprecedented resource demand booms to drive national wealth and offset competitive weaknesses. This is evident in recent advice from the International Monetary Fund, suggesting more subdued growth for Australia over coming years, in line with other advanced economies that also face competitiveness challenges.

A critical part of the solution to these challenges is to promote sustainable economic growth. This will require Australia to attract global capital to fund the development and innovation necessary to drive improved competitiveness and, in turn, increase Australia's productivity.

Tax regulations, including rates, play a key role in the risk and return metrics of any development opportunity. Therefore, having a globally competitive tax system is critical to supporting economic growth, ensuring sustainable revenue flows to government, and improving the living standards of all Australians.

The Tax White Paper process can provide a foundation for redesigning Australia's tax system to promote the objective of supporting sustainable economic growth. BHP Billiton supports measures that will lead to long-term productivity, global competitiveness, sustainable revenue and economic growth for Australia, including:

- putting Australia on a pathway to align the corporate tax rate to the OECD average to help ensure competitiveness with other major economies;
- reforming the most inefficient state taxes such as stamp duties;
- maintaining critical measures in the current tax system that support business investment;
- continuing to uphold the integrity of the tax system and high levels of compliance including through effective alignment with multilateral reform efforts on international tax; and
- streamlining the administration and governance of the tax system.

In this context, BHP Billiton considers that the following objectives should guide tax policy design:

- *Competitiveness*: The tax system should support Australia's international competitiveness, in order to ensure that returns from growth and development opportunities are sufficient to attract the required global investment capital.
- *Efficiency*: Tax regulations should minimise impediments to activities that generate economic growth such as investment, innovation and saving.

- *Simplicity*: Tax regulations should minimise the administrative burden for business and complexity of interpretation and, in so doing, promote more effective compliance.
- *Stability*: Investors value certainty, so tax regulations should remain stable. Where necessary changes are required, these should be implemented via a coherent program of reform, underpinned by effective consultation with affected parties.
- *Sustainability*: Tax regulations should remain suitable in changed economic, technological and other global developments.
- *Confidence*: The public must be confident that the tax system is transparent, has integrity and delivers outcomes that support economic growth and sustainable revenue flows.

Australia's productivity challenge

For a range of reasons, productivity has deteriorated in Australia in recent years, with some industries no longer able to compete effectively in the global market. While the recent weakening of the Australian dollar provides some short-term relief, it is not a sustainable solution. Australia's comparative economic advantages in geology and geography will not underwrite our competitiveness in the next phase of the global growth cycle.

Instead, we must improve the fundamentals that support productivity: raising education and skills standards; building efficient road, rail and port infrastructure to make us a cost-competitive trading nation; and incentivising and developing the technology and innovation required to better generate economic value from our existing resources.

As noted in the OECD's most recent publication on productivity[1], trade openness and participation in global value chains has a critical role in supporting increased productivity by facilitating the diffusion of innovation. This means that countries are increasingly trading in inputs to goods and services, with these goods crossing borders multiple times to form a global value chain. Therefore, Australia's tax settings must be competitive in terms of attracting trade and investment related to activity supporting global value chains carried out in Australia and, additionally, supporting the competitiveness of Australian firms to participate in value chains outside Australia.

If Australia is to be increasingly competitive in these areas, capital investment will be required, with the tax rate an important factor in determining the expected rate of return and thus attractiveness of Australia as an investment destination. Australia's future prosperity requires policy settings that are responsive to the imperative of increasing competition for globally mobile capital. Capital will only flow to investment opportunities in Australia if the nation provides competitive rates of return relative to the associated investment risks.

Corporate tax rate

As noted above, the tax system plays a crucial role in attracting global capital to invest in Australia. In order to ensure competitiveness with other major economies and to provide the basis for long-term sustainable economic growth, Australia should adopt an objective of aligning the corporate tax rate to the OECD average of 25%. This is consistent with the objective of providing globally competitive returns for capital invested in development projects and innovation.

[1] OECD, 2015, *The Future of Productivity*.

BHP Billiton understands the current budgetary challenges faced by the government and accordingly, efforts to align the corporate tax rate to the OECD average should take place as and when fiscal circumstances permit. At the same time, a more competitive tax rate will promote economic growth, which will in turn support long-term sustainable tax revenue.

There is a growing consensus that Australia's tax mix is increasingly uncompetitive, with a high reliance on corporate and personal income taxes relative to other jurisdictions. As the Tax White Paper Discussion Paper outlines, Australia's statutory corporate tax rate of 30% compares to an OECD average of 25%. As also noted in the paper, Australia's corporate tax revenue collections in 2012 were 5.2% of GDP compared to an OECD average of 2.9% of GDP.

It is also notable that other countries such as the United Kingdom have achieved significant reductions in their corporate tax rates in recent years, with estimated benefits flowing through the economy in the form of increased investment, increased demand for labour and higher wages.[2]

Reforming State taxes

In the context of comprehensive and cooperative Commonwealth-State tax reform, BHP Billiton supports efforts to reform the most inefficient state taxes such as stamp duties and taxes on insurance. This supports the objectives of simplicity and efficiency.

State taxes have an important bearing on the competitiveness of Australia's tax system. As the Discussion Paper notes, stamp duties are some of the most inefficient taxes levied in Australia. Stamp duties can act as a disincentive to value-adding activities by creating additional costs related to the reorganisation of business assets. Such reorganisations can create opportunities to increase productivity and efficiency. BHP Billiton's recent demerger of South 32 Limited was, in large part, designed to create a more efficient cost structure for these two organisations thus enabling each company to maximise the value of its economic contribution to shareholders and host jurisdictions. However, the transaction incurred a stamp duty cost in excess of US$300 million. This was the largest single demerger cost and illustrates that the policy rationale for stamp duty in these sorts of instances is unclear – there was no change in the underlying economic ownership of the relevant Australian assets.

Australia's reliance on taxes on financial and capital transactions as a percentage of total taxation is the second highest in the OECD.

There also remain ongoing opportunities for the harmonisation of tax collection and compliance practices across Australia. BHP Billiton continues to deal with six revenue collection authorities (five State Revenue Offices and the ATO). In the case of areas like payroll tax, there remain opportunities for fuller harmonisation in the way such taxes are administered.

[2] In the 2010 Budget the UK Government pledged to get the Corporate Tax Rate down from 28% to 24% by 2014 and published a roadmap to this effect. It has now surpassed this pledge with the main statutory rate at 20%. This has seen the biggest single percentage point fall in a single Parliament since the 1980s. The UK Treasury's modelling suggests that this will:

- Increase investment by between 2.5 and 4.5% in the long-term.
- Increase GDP by between 0.6 and 0.8% in the long-term.
- Raise demand for labour and in turn raise wages and increase consumption by up to 515 pounds per household.

The UK Government has recently announced further reductions in the corporate tax rate: to 19% with effect from 1 April 2017 and to 18% with effect from 1 April 2020.

Tax mechanisms that support investment

BHP Billiton supports the maintenance of critical and longstanding features of the corporate tax system including the fuel tax credits scheme and accelerated depreciation. Like the corporate tax rate, these features are critical to the expected rate of return and attractiveness of Australian projects.

The fuel tax credit scheme upholds the important principle of tax policy that business inputs should not be subject to taxation. Fuel excise is levied on road users to pay for public road building and maintenance. However, diesel is a critical business input for off-road use in mining and other off-road applications throughout the economy, and therefore does not incur fuel excise.

The current accelerated depreciation scheme is also critical to the expected rate of return and attractiveness of Australian resources projects. For example, projects in the resources sector are typically capital intensive with considerable, high-risk exploration outlays, large upfront capital commitments, long-life assets, sophisticated technologies and long lead times to profitability. Accelerated depreciation assists in minimising distortions that could be created in the tax system between non-capital intensive industries (where costs are generally tax deductible immediately or over a short period of time) and capital intensive industries (where costs are generally tax deductible over a long period of time).

Maintaining corporate tax integrity

While BHP Billiton supports efforts to lift the competitiveness of Australia's tax system, we support the need for these efforts to be undertaken as part of a holistic review of Australia's tax system.

This is consistent with the objectives of long-term stakeholder confidence in the taxation system. We also recognise that a tax regime that attracts capital but is not seen as fair in the eyes of the broader community is not sustainable.

We note growing concerns amongst policy-makers and the community at large that the international taxation system has not kept up with a changing global economy, which increasingly is based on global value chains. As such, an important element of the future competitiveness and perceived fairness of Australia's tax system will be how Australia responds to these developments.

BHP Billiton supports multilateral efforts to update best-practice for the taxation of multinational activity through the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan. We believe this is the best way to avoid unilateral action by individual countries that may increase the likelihood of double taxation and increase business uncertainty.

At a time of subdued global growth it is critical that unilateral action does not act as an impediment to cross border trade and investment, thereby placing further pressure on economic growth.

As noted earlier, the OECD has found that trade openness and participation in global value chains are critical to efforts to lift productivity and living standards through the diffusion of innovation. In 1990, 20 per cent of all goods and services exported from any country in the world ended up as intermediate goods, that is, inputs into other goods and services. Today, the OECD estimates that over 70% of global trade is in intermediate and capital goods.[3] Goods and services can now cross borders multiple times before ending up as a finished

[3] OECD, World Bank and WTO, 2014, *Global Value Chains: Challenges, Opportunities, and Implications for Policy*.

product. It is imperative that proposed actions to address BEPS do not impede the participation of Australian multinational companies in these value chains.

In assessing the merits of proposed actions to address BEPS, BHP Billiton believes the following principles should apply:

- Tax should be levied in the jurisdiction where the value creating activity is carried out.
- Efforts to lift tax transparency through enhanced reporting must be easy to comply with, and simple to report and understand.
- Efforts to address BEPS should be internationally coordinated to avoid the possibility of both double taxation and non-taxation.
- New corporate tax measures should be prospective in their application.
- Actions should not penalise companies for responding to national and international tax regimes put in place by governments with the aim of fostering local economic growth.

Enhanced transparency

BHP Billiton supports pursuing increased transparency on multinational tax affairs including through the Board of Taxation process to establish a public tax transparency code announced in the Federal Budget in May.

New reporting requirements must be easily captured, reported and understood while meeting the stated objective in order to avoid creating new regulatory burden without commensurate benefits. This should involve provisions for equivalency in other jurisdictions. With a range of potentially divergent mandatory disclosure initiatives now emerging in different jurisdictions, consistency of reporting obligations is critically important - enabling stakeholders to analyse consistent, meaningful disclosures and for companies to minimise reporting cost and complexity.

Administration and governance

In line with the key objectives of simplicity and stability, tax settings should minimise administrative burden for business, promote effective compliance and support investment.

Australia’s tax system has grown increasingly complex. This has occurred due to a history of continuous, incremental changes which have added to complexity and uncertainty.

While there may be trade-offs between simplicity and other key objectives, there are clear indications that there is room for improvement when it comes to complexity and uncertainty in the Australian system. For example, in late 2013, the Government disclosed plans to deal with 92 announced but unlegislated tax measures – a backlog that resulted from the constant announcement of changes and the inability of legislative drafters to keep up.

On this basis, BHP Billiton believes there are two areas for potential improvement for governance of the tax system:

1. More effective management of change in the tax system, including:
    a. Increased resources for legislative design and drafting of tax measures for Treasury and other agencies.
    b. More orderly announcement and introduction of legislative change, including efficient and timely consultation with impacted parties, and explanatory information that outlines the intent of the changes, made available to a wide range of stakeholders.

c. Greater focus from policymakers on the broad economic implications of changes in tax law in the context of the overall economic policy framework, for example, that any changes are consistent with having a globally competitive tax system.

2. Reducing compliance costs, including:

   a. Establishing a dedicated tax red tape reduction program under the Government's Cutting Red Tape initiative including a multi-year program of initiatives between Treasury, the ATO and State Revenue Offices. This would involve streamlining administrative arrangements for compliance including exploring further proactive compliance opportunities and enhancing risk-based compliance techniques.

Conclusion

The Tax White Paper process is well timed to provide a platform for reconfiguring Australia's tax system to better support productivity and innovation, and in turn long-term economic growth.

BHP Billiton does not underestimate the challenges involved in progressing comprehensive tax reform, but the potential economic dividends from a more competitive tax system are critical to supporting stronger long-term growth for the Australian economy, along with sustainable revenue for governments. BHP Billiton looks forward to continuing to engage in the Tax White Paper process, including through providing comment on proposals for reform presented in the Green and White Papers.