Information released this week by the Australian Taxation Office (ATO) on the amount of tax paid by some of Australia's largest private companies raises questions about the fairness of individual income tax, avoidance of tax by large private companies and the role of the ATO in reducing the avoidance.

The ATO released the second tranche of tax data for Australian-owned resident private companies (321 in total) with total income of $200 million or more, as part of the Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015
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It follows the release last December of tax details of around 1500 Australian public and foreign owned companies with revenue greater than $100 million covering the 2013-2014 financial year.

The latest release included household names such as Bing Lee Electrics, Bob Jane Corp, Dick Smith Electronics, Grocon Group, Hancock Prospecting, Hoyts Group, Linfox, Lowes Manhattan, McDonalds Asia Pacific, Meriton Properties, Pratt Consolidated Holdings, Rip Curl and the Myer Family Investments (see the table below). The information release included data for total income, taxable income and income tax payable.

Dick Smith, Grocon, Hoyts, McDonalds and Pratt Consolidated all paid no tax in 2013-2014. The only one of those that had a taxable income of above zero is Pratt Consolidated, which also had a total income of almost $2.7 billion. The other four had a total income of between $400-$500 million.

Interestingly, Hancock Prospecting paid $466 million in tax given a total income of $2.85 billion and also had the highest ratio of tax payable on total income of 16.34% (Bing Lee had the lowest ratio at less than 1%). The only company which paid tax and had a tax rate of less than 30% (tax payable/taxable income) was the Myer Family Investments.

In general, of the 321 entities listed, 82, or 26% had no taxable income or tax payable. This includes firms such as McDonalds Asia Pacific, Accolade Wines, Barminco, the Grocon Group,

Hoyts, the Walker Group, QCoal, and the Peters Food Group. This group of entities may include companies that made losses, as the amount of the tax losses is not reported. This is despite the fact that the loss amount can be carried forward to offset future tax liabilities and therefore, would appear to be a relevant disclosure.

A further 16 companies (5% of entities) had taxable income but no tax payable. Entities in this group include Pratt Consolidated Holdings, CBH Grain, Schiavello (Vic), the JWH Group and Hindmarsh Construction. In total, over 30% of these entities are paying no tax for this period. The average total income for the 321 companies was $453 million, taxable income was $34 million and tax payable was $9.2 million.

Further analysis reveals gross revenues (for the 321 companies) of $145.4 billion is reduced to $8.18 billion of taxable income, indicating a “tax margin” of 5.62%, or only 4.2% after tax. These indicative returns would be even lower if the amount of losses experienced by some firms were included in the taxable income. While these margins are only a rough estimation of the financial “net profit margins”, it is very low in comparison to the level of profitability reported by publicly listed companies.

It is also approximately half the level of the returns for the entities reported in the ATO’s December 2015 release of public and private firm’s tax summaries. This indicates that these firms are either operating in very unprofitable or tax favourable sectors of the economy, or they are artificially reducing their taxable income.

There could be various explanations for the low level of the taxable income attributable to these firms. For instance, not only did some firms experience losses in this period resulting in missing data in their taxable income, other firms may have experienced losses in previous periods and are now applying accumulated losses to current profits in order to reduce their current tax liabilities.

This is a legitimate tax strategy. They may also be taking advantage of measures such as accelerated depreciation, capital allowances and increased research and development investments which not only reduce taxable income, but are actively encouraged by the tax system in order to increase investment and productive capacity.

However, there are also other more aggressive methods that can be used to reduce taxable income, such as transfer pricing, thin capitalisation and profit shifting. While these arrangements may contravene the tax legislation, they are hard to detect and prosecute, especially when they involve intellectual property rights or management fees paid to subsidiaries in low tax jurisdictions.

Although there may be legitimate reasons for companies to pay no tax, it is unlikely that 30% of average wage earners pay no tax. In addition, many of the companies paying no tax had a total income or revenues of over $1 billion.

Although it is a positive step, the data provided by the ATO raises more questions than answers. For example, Total Income, which according to the ATO is similar to Gross Revenue in the financial report submitted to ASIC, is not reconciled with Taxable Income.

Thus it is difficult to ascertain why and how some of the 321 companies in the data are able to reduce Taxable Income close to or zero given a Total Income which is up to $500 million as is the case with Dick Smith, Grocon, Hoyts, McDonalds and Pratt Consolidated.

Dick Smith is perhaps understandable given the massive losses it has suffered but the other three are a black hole. Likewise, it is unclear why more than 50 companies had a ratio of Tax Payable/Taxable Income of less than the 30% statutory company tax rate.

This doesn't suggest specifically that tax evasion or avoidance is going on; but at the same time this analysis potentially opens up a can worms, although the ATO has indicated all can be explained.

In which case, one must ask the question as to why the ATO can't provide more information as is the case in Sweden and some other Scandinavian countries where the tax returns of all individual and companies are publicly available for scrutiny and analysis.

More importantly, what is required is further analysis of these companies' financial statements and public pressure on the government to legislate additional tax transparency measures.

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