

COVER SHEET

Defending Harmful Tax Practices: Mining Companies' Responses to the Australian Senate Inquiry into Tax Avoidance

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TITLE PAGE

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Abstract

This article examines the Australian Senate's 2015-2017 inquiry into corporate tax avoidance to illuminate the tax strategies used by the multinational corporations (MNCs) most targeted by tax justice campaigners, versus those of particular relevance in an Australian context: mining companies. Using documentary analysis, we examine how these companies discursively defended their tax avoidance strategies. Despite differences in the context in which the issue of tax minimisation has risen to prominence, we show that in Australia, MNCs' legitimacy in paying lower levels of tax has been challenged in a similar manner to that of MNCs in other industry sectors that were held responsible for post-global financial crisis austerity measures in states like the US and UK. This suggests that history and context matter not in and of themselves, but for the impact they have on the discursive power of the actors involved, depending on the visibility and salience of the issue associated with them.

Key words

Multinational corporations, tax, mining, Senate Inquiry, discursive power

Word count

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MAIN TEXT

Acknowledgments

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Introduction

Economic globalisation has been driven by the rise of multinational corporations (MNCs). Regarded as the leading agents, as opposed to ‘forces’, of globalisation breaking down national barriers and remorselessly extending markets, their transnationality is widely perceived to undermine state sovereignty and the efficacy of national regulatory regimes (e.g., see Mikler 2018; Hall and Biersteker 2002; Cutler et al. 1999). Nowhere has this been more apparent than in relation to corporate taxation. MNCs have proven adept at minimising their tax bills by shifting profits to low, or no, tax jurisdictions. These practices are estimated to deny governments between US\$240-650 billion per annum, of which the revenue losses to governments from tax avoidance by US-based global corporations alone have been estimated at US\$100 billion (Crivelli et al. 2016; OECD 2015; Gravelle 2015). Such estimates are imprecise, but they are also problematic due to imprecision in defining what actually constitutes tax avoidance. MNCs by their very nature will legitimately report profit in different jurisdictions due to having operations across multiple countries. This raises questions regarding the extent to which corporate strategies are illicit or simply a/immoral albeit within the parameters of various states’ laws.

Regardless of debates about the size of the problem, what is definite is its significance, and that MNCs have deliberately structured their tax affairs in order to create it. Also, and we argue most pertinently from a political perspective, that the tax revenue losses borne by many states have been experienced in a post-global financial crisis (GFC) context of budgetary pressures and sluggish economic growth. In the states that bore the brunt of the impact of the GFC, such as the US and those in the European Union (EU), these realities have been experienced by citizens who have often endured what has become known as a ‘politics of austerity’. Especially in the UK, this has involved measures in the decade since the GFC to reduce the budget deficit created by the massive bailout of financial institutions coupled with rounds of economic stimulus. Such measures have involved often quite severe spending cuts on social services, tax increases and sometimes a combination of both. This is the context in which debates about global corporate tax avoidance have come to the fore in these countries, one where governments have pared back social services with a perception by their citizens that they are either unable or unwilling to make MNCs pay their ‘fair share’ of tax. But in the case of Australia it has occurred in the context not of crisis and recovery from it, but a longer-term debate about reining in a structural fiscal deficit and the need to cut welfare spending while enjoying long-term economic success.

MNCs have been targeted in a campaign led by activist groups including the Tax Justice Network, Oxfam, War on Want and Christian Aid, as well as the media. They accuse MNCs, such as Apple and Google, of abrogating their tax obligations. Governments have responded by

holding inquiries into MNCs' tax minimisation strategies and unilaterally imposing tax on 'diverted profits'. In Australia, a Senate Inquiry was held over 2015 to 2017 (the Senate Economic References Committee on Corporate Tax Avoidance), and a Diverted Profits Tax Bill (DPTB) was passed into law on 27 March 2017. In this article, we consider how the corporate representatives who gave testimony defended their firms' strategies in their appearances at the Senate Inquiry. We particularly focus on the testimony given by mining MNC representatives, given the contribution their industry has made to Australia's record-breaking economic performance before, during and since the GFC, and controversy surrounding their campaign against paying more tax on their enormous profits. We also demonstrate how mining and other MNCs' representatives' defence of their companies' strategies has changed over the period of the Senate Inquiry, which was held over a period before and after the introduction of the DPTB.

In the first section, we review the history and context of the campaign against corporate tax avoidance. We do so to demonstrate the nature and response to the problem in general, as well as specifically in the cases of states hit hardest by the GFC by comparison to Australia which suffered only minimal impacts. One of the reasons for this was the commodities super-cycle of the 2000s, and the powerful position in which the mining MNCs found themselves at the time. One outcome of this was that they were able to successfully resist attempts to tax their 'super profits'. In the second section, we explain how they did so by successfully arguing and lobbying against the imposition of additional taxes on the super profits they made. We explain why it is often argued that they were motivated by a desire not just to pay less tax, but to maintain and increase their discursive power in the context of a booming economy for which they were able to claim credit. We do so to highlight the manner in which this to some extent backfired in the attention it drew to their tax minimisation strategies in the Senate Inquiry that followed. In the third section, we focus on the testimony of corporate representatives to the Senate Inquiry, and particularly those of the mining industry by comparison to other corporate representatives. We present the results of a content analysis conducted using QSR NVivo 10 that shows most MNC representatives stressed their firm's respect for regulation, but that those which are more territorially restricted in their operations, and particularly the mining MNCs, also tended to stress their moral duty. We note an increased propensity to stress the latter in some cases after the passing of DPTB.

Discursive power leads to legitimacy to set political agendas, and therefore reinforces instrumental and structural power by institutionalising widely accepted norms of behaviour on the basis of it. Based on the patterns of coding we observe, and building on the previous analysis of Bell and Hindmoor (2014) who consider the role played by the power of ideas as well as the structural power of business in respect of Australia's failed resources super profits tax (RSPT), we conclude that Australia's mining companies in particular are now less able to claim the moral high ground, and that by their previous actions find themselves adopting a more defensive position. We find that there is a strong propensity for this as much in the context of long-term economic good fortune, as in crisis, due to their loss of discursive power. We infer this based on their discursive strategies in defending their harmful tax practices in the context of their highly visible previous actions in respect of preventing effective taxation of their super profits, and the rise to salience of tax avoidance as a political issue.

The history and context of the campaign against corporate tax avoidance

The majority of the literature on tax avoidance and the nascent tax justice campaign focuses on the UK, and to a lesser extent, the EU and the US. This is unsurprising when one considers that most of the civil society actors targeting MNC tax avoidance are UK-based. These include

Oxfam, Tax Justice Network, Attac, War Against Want, Christian Aid, and UK Uncut. Together with the Occupy movement, which originated in the US in Manhattan, these groups have formed the core of the ongoing campaign to draw attention to MNC tax avoidance and the impact harmful tax practices have on taxpayers, citizens and ethical businesses in developed and developing states. This campaign started as early as the 1970s when Oxfam first sought to highlight the impacts of tax avoidance on developing states, but was forced to abandon the issue as it was deemed ‘too political’ (Seabrooke and Wigan 2013).

It was not until the late 1990s that the issue re-appeared on the political agenda. In 1999 Oxfam again led the charge against MNC tax avoidance, issuing its landmark report *Tax Havens: Releasing the Hidden Billions for Poverty Education*. Although now the commonly accepted nomenclature, the use of the term ‘tax havens’ was relatively new, appearing in response to the OECD’s efforts at defining and naming particular states as such in its 1998 report *Harmful Tax Competition: An Emerging Global Issue* (Sharman 2006). The Oxfam report, which had input from individuals that went on to form the Tax Justice Network, represented the beginning of the ‘tax justice’ campaign. However, the campaign took over a decade and the deepest financial crisis since the Great Depression to reach the mainstream political agenda. In the meantime, civil society worked in the background attempting to draw attention to the impacts of MNC tax avoidance largely on developing states (Seabrooke and Wigan 2013). The onset of the GFC in 2008 and the resulting budgetary impacts, particularly in the UK, lent the campaign the salience it needed to achieve mainstream political recognition (Eccleston and Elbra forthcoming).

In the UK, declining government revenues forced a reduction in social services and the introduction of harsh austerity measures (Steger, Goodman and Wilson 2013). In response, civil society utilised this moment in time to draw ordinary citizens’ attention to the fact they were being denied basic government services in the name of budgetary repair, while large MNCs continued to pay little or often no corporate tax. Effectively, the message of unfairness was delivered by highlighting how the tax burden had shifted from profitable corporations to ordinary taxpayers (Goodwin and Jasper 2014). At the forefront of this campaign were transnational activist movements critical of capitalism, neoliberalism and MNCs – specifically those mentioned above. While these movements originated in the UK and US, their message resonated around the globe in the context of a time of not necessarily universal crisis nor its aftermath in the form of austerity politics, but certainly an environment of great uncertainty. This led to protests and rallies against tax minimisation, wealth inequality, joblessness and general exclusion from democratic processes. These groups were particularly effective where Oxfam had previously failed in framing their message to resonate with a wider audience, including those who had not previously participated in political protest (Fitzgerald 2015). The rallying call of the Occupy movement, ‘we are the 99 percent’, provided the basis for a stark contrast between ‘corporate welfare’ given to MNCs and the severe austerity being faced by the remainder of the population, again particularly in the UK (Steger et al. 2013).

The impacts of the GFC were much more acutely felt in the UK, US and Europe than in Australia. In fact, in Australia, they were virtually not felt at all. The result is that Australia escaped the need for the harsh austerity measures seen elsewhere, particularly in the UK, due to a strongly performing economy which has experienced a record 26 years of consecutive growth (The Economist 2017). This globally unprecedented economic success has occurred in parallel with periods of serious economic downturn experienced in other OECD countries since the GFC. Unsurprisingly, there has therefore been comparatively little written about MNC tax avoidance from an Australian perspective, or the tax justice campaign in Australia. This is despite the fact that Australian MNCs have been accused of employing aggressive tax minimisation strategies

costing Australian taxpayers between A\$5-6 billion (US\$4-5 billion) in tax revenue annually, as highlighted by Oxfam's Australian arm (Oxfam 2016). And yet, the issue rose to political prominence to the extent that the Australian Government held a Senate Inquiry over 2015 to 2017 into the tax practices of MNCs operating in Australia.

A key reason why the Senate Inquiry was held is related to Australia's unparalleled economic performance. While the drivers of this economic performance are multifaceted, and Australia's avoidance of a recession in the context of the GFC has as much, possibly even more, to do with stringent and effective financial market regulation by comparison to other states that were hit hardest by the GFC, as suggested by Bakir's (2013) comparative analysis, the fortuitous position Australia found itself in due to the commodities super-cycle of the 2000s was also a key factor. This led to record demand for iron ore and other minerals from China, and therefore was also a major contributor to Australia's avoidance of any serious impacts from the GFC. As such, the Australian mining industry was (and still is) able to discursively portray itself as a key pillar of the Australian economy, a driver of growth and provider of employment (Bell and Hindmoor 2014).

However, there is a more problematic aspect to the industry's portrayal of itself in this role. In portraying itself as central to Australia's economic performance, the industry has drawn attention to the fact that it has strenuously argued and lobbied against paying tax reflecting the super profits it has enjoyed. Between 2010 and 2014, various Australian governments grappled with the idea of taxing mining 'super profits' through two different mechanisms: a proposed resources super profits tax (RSPT) that was never imposed, and a minerals resources rent tax (MRRT) that ultimately collected virtually no revenue until it was scrapped in September 2014. A key reason why these proposed taxes failed was a successful A\$22.2 million advertising campaign waged by Australia's two largest iron ore miners, Rio Tinto and BHP Billiton. They funded the majority of the campaign, although it was run by the Minerals Council of Australia (Bell and Hindmoor 2014; Cleary 2011). This campaign did not just succeed in them avoiding paying tax, but also had political impacts in contributing to the overthrow of two Prime Ministers, Kevin Rudd and Julia Gillard, a change of government and, ultimately, the abandonment of the tax (Eccleston and Hortle 2016).

O'Harte's (2017) analysis demonstrates that the mining industry's success in campaigning and bringing pressure to bear to avoid the RSPT and ultimately 'achieving' the ineffective MRRT emboldened it to press its advantage. After the success of the industry's campaign against the RSPT, former Rio Tinto CEO Tom Albanese declared 'policymakers around the world should learn a lesson when considering a new tax to plug a revenue gap, or play to local politics' (Wilson 2010). The industry moved on to teach this lesson to the Western Australian Government during the 2017 Western Australian state election. During this election, the former leader of the Western Australian National Party, Brendon Grylls, proposed an increase in the tax on extraction of iron ore that would have raised A\$2.7 billion per annum (Coorey 2017). BHP, Rio Tinto, the Minerals Council of Australia and the Western Australian Chamber of Minerals and Energy responded with a A\$4.4 million campaign targeting the Western Australian National Party. This contributed to Mr. Grylls losing his parliamentary seat, and a landslide victory to the Labor Party which won the election with the largest majority government in Western Australian parliamentary history (Caporn 2017).

The industry's successful campaign against the RSPT was therefore seen by mining industry leaders as representing a 'new paradigm of political influence' (Taylor 2011). Since then, MNCs in the oil and gas industries, and also the financial sector, have threatened 'mining tax style'

campaigns against proposed policies they do not support, such as the suggestion of a Royal Commission into banking practices (Massola 2017). No wonder then that as a result of the perceived contribution of the mining sector to the overall economy, and a history of the industry successfully resisting payment of higher taxes on the extraordinary revenues it has earned, debates in Australia around the taxation of MNCs have either largely focused on, or at least prominently featured, mining MNCs. And it is in this context that recent proposals for reducing corporate taxation more generally are being held, coupled with public knowledge of the campaigns internationally and reports of extensive tax avoidance by not just MNCs, but also high net worth individuals with the release of the Panama and Paradise Papers.

Defending harmful tax practices: the role of discursive power

The lessons from the mining industry's successful campaign, and the political implications that stem from it, have been explored in the academic literature (Eccleston and Hortle 2016). In it, debate about the political implications substantially revolves around the importance of discursive power as a tool of business. This is because the mining industry has relied heavily on a narrative which links Australia's strongly performing economy to business profitability, and other industries have taken their lead from its track record of successful public campaigns. Yet, this narrative also makes the industry a tempting and highly visible target of governments attempting to increase revenue, and tax justice activists focused on the tax practices of some of Australia's most profitable MNCs.

In essence, the argument about the importance of focussing on discursive power is that there was not so much a threat to the industry, as there was to its ability to get the policy outcomes it desired. This is Wilson's (2016) point in finding that the RSPT and MRRT both posed neither a significant economic threat to the mining industry nor the Australian economy more broadly. Over the period of the commodities super cycle, and over the period when the GFC hit, Australia's share of the international iron ore trade *doubled* between 2006-2015 to account for 59 percent of the total, but more importantly Australia accounted for 95 per cent of the growth in the world's iron ore production. In other words, the growth in Australia's share of the global iron ore trade virtually accounted for *all* of the global growth in that trade. BHP and Rio Tinto's role in that growth is notable, in that they dominate Australian mining to the extent that their combined market capitalisation (over A\$100 billion each) is more than twice as large as the next 98 largest mining companies on the Australian Stock Exchange. Their size, overall economic dominance, and dominance of the global iron ore trade, mean that they can actually exert a measurable influence on the global iron ore spot price (Seccombe 2015; ASX 2017). That the main MNCs in the industry were so economically powerful at a time of such an economic boon for Australia, suggests that it cannot be the case that their campaign was essentially motivated by concern as to their financial returns nor some threat to the Australian economy.

Such a conclusion aligns with arguments made by Bell and Hindmoor (2014), who suggest that the structural power of business is augmented by the role played by agents and ideas, demonstrated through the mining industry's ability to frame the RSPT/MRRT using narratives of economic demise for not only the mining industry, but the broader economy. They argue that these discourses were particularly effective given the resulting abandonment of the tax and the political implications for the destabilisation of the government. On the other hand, Marsh and Lewis (2014) suggest these findings overstate the importance of the mining industry's campaign in relation to the incompetence of successive governments in negotiating tax policy. Specifically, they suggest that the Rudd and Gillard Labor governments failed to utilise their political resources effectively, which weakened their legitimacy and ability to push through this

legislation (Marsh and Lewis 2014; Marsh, Lewis, and Chesters 2014). While there remains disagreement regarding the relative importance of corporate structural versus discursive power, the potential for tax reform in Australia has been impacted heavily by the failed attempts to tax mining MNCs during a period of unprecedented profitability.

As noted, this has had real effects in terms of enormous foregone revenues, and not just in respect of mining. For example, a recent comparative analysis of the global resources sector suggests that Australia could collect an additional A\$90 billion if it introduced a European-style resource tax. Furthermore, while Australia is on track to eclipse Qatar as the largest exporter of natural gas by 2020, this will generate tax revenue of only A\$600 million by comparison to Qatar's A\$26.6 billion (Bagshaw 2018). The role played by discursive power in creating this state of affairs may be summed up by Lowi's (2001, 131) observation that 'whoever sets the terms of discourse will almost always determine the outcome'. If corporations lose the ability to do this, especially if their claims to righteous motivations are regarded sceptically, then they are in a diminished position to make widely accepted claims as to their interests being those of society at large. They lose discursive power, particularly the ability to use communicative practices to shape the preferences of others, to actively promote norms of behaviour that become the accepted 'rules of the game'. Essentially, they lose the ability to create 'truths' that are accepted by other political actors including policymakers (Lukes 1974). As Elbra (2014, 6) puts it, 'interests do not need to be pursued if they can be created', and as such if MNCs like those in the mining industry are able to develop a high level of perceived legitimacy, they can promote the 'projection of a particular set of interests as the general interest' (Levy and Newell 2002, 87). If they lose the ability to do this, they risk being in a position where their claims are more easily 'dismissed by a sceptical and cynical public' (Tienhaara 2014, 167), meaning they have to fall back on the instrumental and structural power they possess.

As per the three faces of power framework for global business presented in Fuchs (2007), instrumental power is the most basic form of power MNCs wield. It entails them directly influencing the policy process through staffing governments with industry supporters, and influencing government decision-makers through campaign contributions and lobbying (Hacker and Pierson 2002; Lukes 1974). This type of power is relatively weak due to its high visibility if exercised publicly, or because of the personal relations needed for it to be exercised covertly (e.g., see Culpepper 2011). Whether more overt or covert, it means that business agendas must be pursued through the expenditure of considerable time and resources influencing policy-makers who may be more inclined for political reasons to respond to social concerns. Structural power refers to corporations' size and economic dominance. The size, economic dominance, and geographical dispersal of MNCs potentially gives them the leverage to organise issues 'in' and 'out' of politics, and have their interests served without explicitly making the case for this (e.g., see Bachrach and Baratz 1962). They can punish or reward countries for the provision of favourable investment conditions not just by explicitly, but implicitly threatening to relocate their operations (e.g., see Cox 1987; Frank 1978).

Discursive power, and the legitimacy to which it potentially gives rise, is the political 'prize' MNCs seek because it facilitates the creation of a world in the image of their interests. If power is 'the production, in and through social relations, of effects that shape the capacities of actors to determine their own circumstances and fate' (Barnett and Duvall 2005, 3), then this is surely the most crucial aspect of it. As such, while the potential of corporations to influence governments through lobbying, and, because of their size and economic dominance, they cannot be ignored, if we want to understand how MNCs establish the *right* to do this, then ultimately we need to examine the extent to which they can create their interests in others—i.e., a belief that what

serves them also serves the public interest not just nationally, but globally. If the central question for all political scholars is ‘who governs?’, then the political power of MNCs is not just a question of whether they have political influence. It is obvious that they do. But the extent to which they do so, and how they do so, is also related to the question of whether they are seen – in the true sense of the word, highly visibly by the public and other political actors - as possessing the discursive legitimacy to set agendas and maybe even govern in their own right. This is also why their responses to the Senate Inquiry are enlightening.

The Senate inquiry

The Senate Inquiry has confirmed what tax justice campaigners have been suggesting for some time. This is that MNCs use complex tax avoidance strategies, generated by professional tax accounting and law firms, to minimise their tax obligations in ‘high-tax’ countries like Australia. In doing so, they may shift their tax obligations to low tax countries or tax havens, and may avoid paying tax on their profits altogether. While this article does not seek to develop a detailed explanation of the accounting practices behind these outcomes, in essence the majority of complex tax regimes use one or more of the following manoeuvres: profit shifting, thin capitalisation and inter-company loans. Taken together, these mechanisms allow firms to transfer profits around the globe to ‘friendlier’ tax jurisdictions, where the tax rate may be lower or special reduced rates have been negotiated. For example, Rio Tinto and BHP appeared together before the 2015 Senate Inquiry and were asked about their use of marketing hubs in Singapore. Both firms utilise these arrangements, whereby the Australian firm ‘sells’ product to its Singapore company, which is then responsible for marketing these minerals globally. As Rio Tinto Managing Director Phil Edmunds noted, the tax rate paid by Rio Tinto in Singapore is just five percent, considerably lower than what would be levied if the profit on the sale of commodities had been earned in Australia. Under the Singapore marketing hub arrangements used by both BHP and Rio Tinto, there is no need for commodities to be physically transferred to Singapore, instead they remain in Australia while taxes on their sales are either negated or paid to the Singaporean government (Chenoweth 2015). In the time since the hearing, the Australian Tax Office (ATO) has investigated these arrangements and declared tax owing of \$1.9 billion between both firms, although BHP and Rio Tinto are contesting these assessments (Chenoweth 2017).

While such methods used by MNCs to reduce their tax obligations are relatively well understood, we examined their testimony before the Senate Inquiry to understand their representatives’ justifications for these practices, and thereby to infer the potential for a concerted campaign to shift the perspectives of MNCs. Given our focus on the discourse, we also consider changes to their explanation/defence of their strategies over the course of the inquiry from 2015 to 2017, and therefore before and after the DPTB passed into law on 27 March 2017. Due to the context outlined above, we focussed on mining MNCs in comparative perspective to those in other industry sectors. The testimony of MNC representatives was coded using QSR NVivo 10. Three main rationales were observed and codes applied in respect of them:

- (1) Business ‘DNA’: A corporation should be expected to aggressively minimise tax to deliver shareholder value.
- (2) Respect for regulation: A corporation should pay what is stipulated under the law, no more and no less.
- (3) Moral duty: A corporation should not aggressively minimise tax payments, and should be responsive to community concerns and social attitudes.

The coding was undertaken by our Research Assistant, Dr Delphine Rabet. The testimony was

then divided up between us and we each separately coded our portions of the testimony. We then met to review and reconcile differences in our coding results, reaching agreement after considerable discussion. The results are shown in Table 1, broken down by the industries of the MNCs whose representatives gave testimony, which we have designated as new technology, pharmaceutical, energy, mining and new technology/services.¹

[Table 1 about here]

What is striking is that none of the MNCs' representatives indicated that aggressively avoiding tax was a corporate strategy, except for Google. Their Australian Managing Director, Maile Carnegie, declared:

Google does not structure itself based on tax; it structures itself based on being competitive. We are not opposed to paying tax; what we are opposed to is being uncompetitive.

The implication of her view is that tax competition between states is regarded as an aspect of competition by the company more generally. Ms Carnegie appeared to confirm this when asked how much advertising revenue generated by users of its web search engine in Australia was reported to the Australian Taxation Office (ATO). She replied:

We do not report any of that. All of that revenue goes through to Singapore.

When pushed on the rationale for so doing, she justified it in the following terms: 'what Google is doing in Australia is very similar to what Australian companies are doing outside of Australia'. In other words, she was in no way apologetic for Google's profit-shifting strategies, seeing these as an essentially 'normal' part of doing business and being competitive. Her responses were not dissimilar from public statements that have previously been made, albeit more colourfully, by Google's Chairman Eric Schmidt. Far from shying away from what others may regard as a corporate obligation to pay a fair share of tax he is on the record as proudly defending the tax minimisation strategies of his company in the following terms: 'it's called capitalism...we are proudly capitalistic...I'm not confused about this' (Womack 2012).

For all the other MNCs, respect for regulation predominated in the testimony of their representatives. All of them, excepting GSK, made statements about being good corporate citizens, complying with the law and working cooperatively with the ATO. This includes the mining companies which mounted the campaigns against the RSPT. For example, Rio Tinto's Managing Director, Phil Edmands, stated:

Our overall philosophy regarding tax is that policy makers need to make the laws, but we will apply them in conformity with our global code of business conduct in the way we work. So our policy is to comply with both the letter and the spirit of the law.

Similarly, BHP's President of Corporate Affairs, Tony Cudmore, stated: 'our position is that we comply with the tax rules and tax regulations in any jurisdiction in which we operate'. Such positions were likewise given by MNC representatives in the other sectors. However, what is noticeable in the coding results is that, excepting Glencore, the mining MNCs were also the most likely to stress their moral duty. They expressed what can only be described as noble sentiments, and Rio Tinto and BHP's representatives made most of them. For example, Mr Edmands said:

We take up our legitimate tax entitlements, but we do not undertake aggressive or non-commercial structuring to avoid paying tax. We do pay tax where it is properly due. Allied to this, we believe in transparency, so that the community and policy makers have appropriate insight into whether the system is

¹ Representatives from the big four global professional services firms – Deloitte, EY, KPMG and PwC – also appeared before the Senate Inquiry, but their responses have not been included here. This is because they both advise on taxation strategies as well as engage in these themselves, and therefore their responses cannot be included on a like-for-like basis for the sake of comparison. Greenwood's & Herbert Smith Freehills, a Sydney-based tax consultant, is not included for similar reasons, in addition to being largely Australian-focussed rather than an MNC. NewsCorp was also not included, given that as it was the sole news-media MNC represented at the Senate Inquiry hearings, and therefore it cannot be said to necessarily be representative of an industry.

working and they can make changes to it if it is not.

While Mr Cudmore said:

I would like to note that we are very committed to transparency. The ATO has full visibility of BHP Billiton's operations, including our marketing operations. We are a founding member of the Extractive Industries Transparency Initiative and an active member of its international board. We joined EITI as a founding member in 2002. We voluntarily publish tax and royalty payments on a country-by-country basis in our annual sustainability.

The positions of both seem best summed up by Mr Edmonds' following declaration:

If you are asking, 'are we doing aggressive tax planning?' No, we are not doing aggressive tax planning, so we are not inviting the big four in to say, 'hey, come and pitch your aggressive tax deals to us'. We do not do aggressive tax planning.

It should also be noted that, again excepting the pharmaceutical company GSK, these two mining MNCs had the greatest proportion of codes applied for moral duty not just out of all the mining MNCs, but of all the MNCs whose representatives appeared before the Senate Inquiry.

Overall, three observations may be made on the justifications offered by the MNCs' representatives for the companies' tax strategies. The first is that overwhelmingly they stressed their respect for regulation. In other words, they tended to take a stance that is somewhat neutral, stressing that they abide by the law and pay the taxes they are legally obliged to pay. Secondly, to the extent that they highlighted other rationales for the tax they pay, the mining MNCs' representatives were most likely to mention their firms' sense of moral duty. Thirdly, the only MNC representative who stressed tax minimisation as part of business DNA was Google's. It, and the other new technology/services firms, were also notable for being the least likely to focus on moral duty.

The coding patterns and the positions of the MNCs they represent are suggestive of the relatively different power positions the MNCs find themselves in. The new technology/services MNCs are able to operate anywhere and use a global medium for the conduct of their business. It is therefore not surprising that their representatives seem the least concerned about being challenged on tax avoidance. They stress the letter of the law more than moral duty, and in the case of Google virtually 'celebrate' the ability to minimise tax obligations. However, the mining MNCs must operate in particular locations due to the nature of their business. They, followed by the energy and to some extent the pharmaceutical MNCs, are territorially bound in ways the new technology/services MNCs are not. And of all the MNCs represented at the Senate Inquiry, the mining MNCs are the least footloose and deterritorialised in their operations by the very nature of what these entail: operating actual mines. Therefore, they must stress not only their adherence to the letter of the law, but also its spirit, if they are to avoid risking the imposition of increased taxes in the territories in which they operate. This inference may be drawn from the coding of their representatives' statements, and it is supported by the observation that the mining MNCs which were at the vanguard of the campaign against Australia's RSPT are also the ones whose representatives most stressed their moral duty to pay their fair share of tax. This may not be because they actually do feel a moral duty, but because by their previous actions in the context of a booming Australian economy, they have made themselves highly visible political targets on an issue that has risen to high political salience. This is suggested by their representatives adopting the most conciliatory discursive strategy of all the MNCs whose representatives appeared before the Senate Inquiry.

Whether or not the MNCs' representatives changed their discursive strategies over the duration of the Senate Inquiry is shown in Table 2. For comparative purposes, only those MNCs represented in both the 2015 and 2017 hearings are shown. The results lend further support to our

findings in respect of the positions taken by the MNCs' representatives overall, in that there is a trend exhibited of moving towards stressing moral duty in addition to respect for regulation, or strengthening claims of respect for regulation. Of the new technology/services MNCs, Google and Microsoft's representatives both shifted from business DNA and respect for regulation as rationales for their tax strategies towards moral duty. Microsoft's representative moved to stressing respect for regulation one hundred percent. Similar trends are exhibited for the other MNCs whose representatives in varying degrees either stressed even more their respect for regulation, in some cases one hundred percent of the rationales they offered for their tax strategies (BP and Chevron), or focused more on their firms' moral duty (Shell and Woodside), or maintained a focus on moral duty over respect for regulation (BHP). From this it may be surmised that the increased visibility and debate surrounding corporate tax practices, and the passage of the DPTB, had an impact on the rationales they offered for their strategies over this time. In essence, they have either strengthened their support for regulations, or claim enhanced moral duty in respect of their tax affairs. This appears to be a defensive strategy in the sense that they are saying no more new legislation is necessary because they are either doing what they should, or doing more than is required already.

[Table 2 about here]

Conclusion

MNCs have not had to overtly defend their position on tax minimisation until relatively recently. Instead, they have been able to rely on the glacial progress of global corporate tax reform. However, as individual states are moving to more aggressively engage in unilateral attempts to tax them, the national regulatory environments in which they find themselves are changing. We have focused on Australia, but it may be noted that new regulations and tax bills have been introduced in other states such as the US, as well as by the EU (e.g., see Elbra and Mikler 2016). MNCs now face enhanced pressure to defend themselves, and what we have stressed is that this is not just in the context of states whose populations have been forced to endure a politics of austerity in the decade since the GFC, but also in the case of Australia where it is increasingly evident that a booming economy over a long period of time has not seen the tax revenues flow into public coffers to the extent that should have occurred.

The result is that MNCs, including Australia's major mining companies, find their ability to exercise discursive power threatened. While still possessing enormous structural power and considerable capacity for exercising instrumental power through financial contributions and the relationships they have with policymakers, the danger they find themselves facing is a compromised position to be seen to legitimately set the policy agenda. We noted earlier that the financial sector threatened a 'mining tax style' campaign against a Royal Commission into the practices of Australian banks, and it is surely clear that the damage to their reputations as a result of the findings of the Royal Commission that ultimately was held have impacted their discursive power. As Wilks (2013, 177) notes, power that is believed to be exercised responsibly comes to be institutionalised as 'normal', or at the very least 'tolerable', because it is seen as legitimate. It endures and institutionally re-embeds itself rather than having to be continually asserted. Discursive power that leads to legitimacy therefore reinforces instrumental and structural power by institutionalising widely accepted norms of behaviour on the basis of it. If MNCs such as BHP and Rio Tinto, in addition to those that have been more in the spotlight of global campaigns such as Google and Apple, primarily rely on threats and rewards, or on making demands based on their economic dominance and indispensability, then the continuity of, and commitment to, their agendas and interests will be threatened. If support for them is given grudgingly, then this

suggests potential for their agendas and interests to be controlled by others.

The leaders of the world's major corporations know this. Studies such as Davis et al. (2016) find that corporations with the most extensive corporate responsibility (CSR) programmes are also those with the most aggressive tax minimisation efforts. They conclude not only that 'the payment of taxes is not viewed as an important socially responsible activity' but also that 'CSR and taxes act as substitutes rather than complements' (Davis et al. 2016, 65). It takes no great leap of logic to conclude, as they do, that CSR claims, or moral responsibility as we have framed it in our analysis, are primarily intended to offset the potential for negative perceptions arising from aggressive tax avoidance strategies. In failing to pay a fair share of tax, and in the case of Rio Tinto and BHP in Australia loudly proclaiming their position as a legitimate one, or in the case of Google declaring it normal business practice, they have effectively shifted blame to governments for the opportunities afforded them. The result is that they have weakened their position and unwittingly invited and enabled (if not straightforwardly delivered) the response they least desire: unilaterally imposed taxes on diverted profits.

We do not consider the actual changes in their taxation strategies as a result of campaigns, and in the case of Australia the passing of new legislation, but the discursive strategies MNC representatives have employed are revealing in their own right. The implications of them are that the mining industry and its key MNCs in particular should have pursued their interests less 'noisily'. They should have relied more on their economic dominance and relations with policy makers, and in stressing their indispensability to the Australian economy and the benefits they confer they should have actually conferred more in the form of taxes paid! Instead, they attacked elected representatives and successive Australian governments. Through such discursive strategies, as much as their actions, they may have overreached themselves to effectively help kill the goose that laid their golden eggs – i.e. government inaction and public acceptance of it. It is revealing that this has occurred in an environment of unprecedented economic success, for which mining MNCs have claimed responsibility, just as it has occurred in the context of post-GFC austerity politics, for which MNCs in other sectors have been held responsible.

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Table 1. Rationale for taxation strategies

	Business DNA	Respect for Regulation	Moral Duty
New Technology/Services			
Apple	0.0	100.0	0.0
Facebook	0.0	100.0	0.0
Google	28.6	64.3	7.1
IBM	0.0	83.3	16.7
Microsoft	0.0	75.0	25.0
Air B&B	0.0	100.0	0.0
Uber	0.0	100.0	0.0
% All New	7.8	86.3	5.9
Pharmaceutical			
AstraZeneca	0.0	100.0	0.0
Eli Lilly	0.0	75.0	25.0
GSK	0.0	0.0	100.0
Johnson and Johnson	0.0	50.0	50.0
Sanofi	0.0	50.0	50.0
Merck	0.0	100.0	0.0
Pfizer	0.0	100.0	0.0
Novartis	0.0	100.0	0.0
% All Pharmaceutical	0.0	75.0	25.0
Energy			
BP	0.0	50.0	50.0
Caltex	0.0	50.0	50.0
Chevron	0.0	75.0	25.0
Origin	0.0	100.0	0.0
Santos	0.0	100.0	0.0
Shell	0.0	66.7	33.3
Viva Energy	0.0	100.0	0.0
Woodside	0.0	58.3	41.7
% All Energy	0.0	70.0	30.0
Mining			
Adani	0.0	50.0	50.0
BHP	0.0	33.3	66.7
Fortescue	0.0	66.7	33.3
Glencore	0.0	27.8	0.0
Rio Tinto	0.0	40.0	60.0
% All Mining	0.0	61.1	38.9
% ALL	2.9	75.5	21.6

Table 2. Rationale for taxations strategies, 2015 versus 2017

	2015	Respect for	Moral Duty	2017	Respect for	Moral Duty
	Business	Regulation		Business	Regulation	
	DNA			DNA		
New Technology/Services						
Apple	0.0	75.0	25.0	0.0	100.0	0.0
Google	37.5	62.5	0.0	25.0	62.5	12.5
Microsoft	0.0	100.0	0.0	0.0	66.7	33.3
% All New Technology/Services	10.7	75.0	14.3	11.8	76.5	11.8
Energy						
BP	0.0	33.3	66.7	0.0	100.0	0.0
Chevron	0.0	80.0	20.0	0.0	100.0	0.0
Santos	0.0	100.0	0.0	0.0	0.0	0.0
Shell	0.0	100.0	0.0	0.0	50.0	50.0
Woodside	0.0	40.0	60.0	0.0	27.3	72.7
% All Energy	0.0	55.6	44.4	0.0	40.0	60.0
Mining						
BHP	0.0	25.0	75.0	0.0	33.3	66.7
% ALL	6.0	64.0	30.0	5.7	57.1	37.1