Submission by Free TV Australia

Tax White Paper Task Force –
The Treasury

Re: think – Tax Discussion Paper

5 June 2015

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EXECUTIVE SUMMARY

- Free TV welcomes the opportunity to contribute to the national conversation on tax and the issues raised in the discussion paper, *Re:think*, ("Discussion Paper"). This submission will focus on issues of specific concern to the media sector.

- Commercial free-to-air broadcasters make a significant contribution to the Australian economy and are the major underwriters of Australian content and the wider Australian production sector.

- In a rapidly fragmenting media environment where Australian broadcasters are competing against global media giants who pay little or no Australian tax, the current tax and regulatory framework is unsustainable.

- Free TV supports reforming the tax system to ensure that all media companies doing business in Australia compete on a level playing field.

- This submission will address three key areas of urgently needed taxation reform:

    - Removing broadcasting licence fees which are out of step with international best practice and which limit the ability of broadcasters to invest in expensive Australian content.

    - Addressing multinational tax avoidance and minimisation by closing remaining loopholes in Australian laws that facilitate these practices and lowering the company tax rate in-line with measures taken in other jurisdictions to address the issue.

    - Increasing the producer offset for television to 40%, in-line with the available offset for feature films consistent with a recommendation of the Convergence Review.

- These reforms are critical to ensuring that commercial free-to-air television can continue to provide high quality Australian content, and support local jobs and the Australian production sector.

Introduction

Free TV Australia (Free TV) represents all of Australia's commercial free-to-air television broadcasters. At no cost to the public, our members provide fifteen channels of content across a broad range of genres, as well as rich online and mobile offerings. The value of commercial free-to-air television to the Australian public remains high. On any given day, free-to-air television is watched by more than 13.5 million Australians.

As noted in the Discussion Paper, changes in the global economy have put a strain on the Australian tax system.[1] This can be seen in the media sector where there is inequality between media organisations which are subject to different levels of tax despite providing similar services.

All media companies conducting business in Australia should pay tax in Australia and should be subject to fair levels of taxation. This is not currently the case. Broadcasters are subject to an outdated industry specific tax in addition to their ordinary corporate taxes in circumstances where competition by new entrants such as Netflix and YouTube is increasing, and technology is changing consumer behaviour and the broadcasting sector as a whole.

In addition, some multinational media companies which directly compete with local media companies for advertising revenue, avoid paying their fair share of tax in Australia.

The status quo places commercial free-to-air broadcasters at a significant competitive disadvantage. This in turn detrimentally impacts on the Australian community.

Economic Value of Commercial Free-to-air Television

The commercial free-to-air industry is a major contributor of value to the Australian economy and is a positive driver of economic welfare. Free-to-air television is the only platform that delivers high-quality Australian programmes, including news, current affairs, sports and culture to all Australians for free.

In 2013/14 commercial free-to-air broadcasters invested a record $1.54 billion in Australian content and in the same year Australian content represented 79 percent of commercial free-to-air networks' total content spend. Over the last five years, Free TV broadcasters have invested $6.62bn in Australian content. Free TV networks are the major underwriters of the Australian production sector, employing over 15,000 people both directly and indirectly.[2]

A report by Venture Consulting, *The Value of Free TV*, released in May 2015 found that the commercial free-to-air television industry:

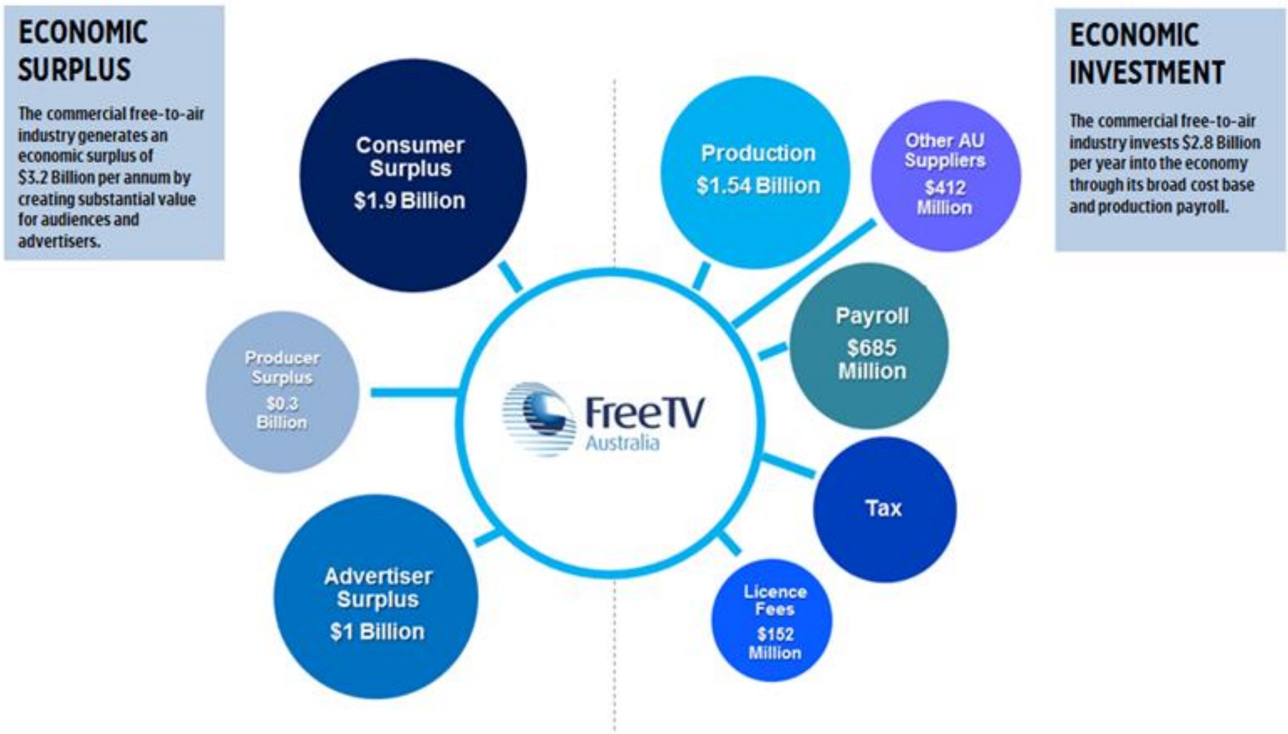
- generates $3.2bn per annum of economic surplus;
- pumps $2.8bn per annum of economic investment back into the Australian economy;
- contributes $6 out of every $10 spent on Australian content;

[1] Discussion Paper, at 7.

[2] Australian content expenditure figures are compiled by Free TV, figure for 2012-13 is adjusted (up from the previously reported figure of $1.36 Billion). ACMA "Commercial TV licensees met Australian content quotas in 2013", July 2014.

- directly employs 7,232 people across technical, operational, financial and management roles; and
- pays significant taxes in Australia.[3]

Exhibit 2 of the report shows the direct investment that the industry makes in the Australian economy:[4]



Further, the Australian Screen Association in its report, *Economic Contribution of the Film and Television Industry in Australia*, released earlier this year, found that the Australian film and television industry collectively contributed a significant $5.8 billion into the nation's economy in 2012-13, supported more than 46,600 full time jobs and generated almost $2 billion in tax revenues.[5]

Tax reform is essential to ensuring that free-to-air broadcasters are able to continue to make this valuable contribution.

Licence Fees

Urgent action is required to remove broadcasting licence fees. Licence fees are effectively an industry specific 'broadcast tax' on commercial free-to-air broadcasters

[3] Venture Consulting, The Value of Free TV, the contribution of commercial free-to-air television to the Australian economy, May 2015.

[4] Ibid, at 4.

[5] Australian Screen Association, Economic Contribution of the Film and Television Industry in Australia, February 2015.

which must be paid annually in addition to significant corporate business taxes. As noted in the Venture Consulting report, '*The Value of Free TV*':

> *"The commercial free-to-air broadcasters pay an annual licence fee to the Government in addition to other taxes and levies. This is paid in consideration for broadcasting licences that they receive and, indirectly, for the radio-frequency spectrum which they are allocated for the broadcast of their services."*[6]

At the time of enactment of the licence fee regime in 1964, licence fees were set at 9% of broadcasters' gross advertising revenue.[7] At that time, spectrum was the only platform for the delivery of content to Australian living rooms, giving the three commercial broadcasters a strong base from which to develop healthy and profitable businesses.

As such, a quasi-tax on revenues as well as significant content obligations were imposed in exchange for the use of this valuable spectrum.[8] As noted by Venture Consulting:

> *"..the fee was historically introduced in the 1960s when the right to use spectrum was the foundation of a super-profitable model and justified an additional levy."*[9]

However, since 1964, the media landscape has significantly changed and the basis for imposing broadcasting licence fees no longer applies. Rapidly evolving technologies have disrupted traditional media business models, fundamentally altering the competitive landscape, and the regulatory environment has also changed significantly to adapt to new technologies.

In the modern media environment:

- Spectrum is no longer the only way of distributing video content. Australians can now consume content over the internet, bypassing spectrum.
- Over 40% of spectrum has been sold to competing services,[10] which are not subject to broadcasting legislation and the platform specific regulation that it imposes; and
- Costs of broadcasters' compliance with regulatory obligations such as Australian content and captioning have increased substantially since licence fees were introduced;[11]
- Global companies with significant local footprints are able to use offshore hubs to reduce tax liabilities (see section on Multinational Tax Avoidance below).

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[6] Source: Venture Consulting, Licence Fees: The Australian regime is a global outlier and an outdated holdover from a spectrum-dependant broadcast environment that no longer exists, 2014, at 18.

[7] *Television Licence Fees Act 1964*, s 6.

[8] Venture Consulting, Op. Cit., at 18.

[9] Ibid, at 19.

[10] Free TV broadcasters handed back over 40% of their spectrum to Government as part of the digital dividend process. Most of this spectrum was auctioned off to competing services which are largely unregulated.

[11] For example, from 28 June 2012, broadcasters have been required to provide a captioning service which now applies to all programs within the designated hours of 6 am and midnight and all news and current affairs programs outside these designated hours.

In this context licence fees are outdated and place free-to-air broadcasters at a competitive disadvantage with competing platforms such as Pay TV and online providers which are not subject to industry specific taxes. They stifle innovation and competition by preventing broadcasters from investing in the digital platforms and assets required to compete for advertising dollars with global players and new entrants.

In addition, Australia's licence fee regime is out of step with comparable international jurisdictions including Singapore, New Zealand, the UK and the US, which have reduced their licence fees or shifted to a cost-recovery model in recognition of the new media market.[12] Attachment 1 provides a comparison of licence fees across a number of jurisdictions.

Despite an effective reduction in the licence fee in 2012 to 4.5% of gross advertising revenue,[13] it remains higher than in any other comparable market on any comparative measure.[14] As the figures in Attachment 1 demonstrate, Australia is six times more expensive than the second most onerous regime, Singapore, and 175 times greater than the US. On a percentage of revenue basis, Australia is nearly twice as expensive as Singapore at 2.5%, with other markets at significantly lower levels.[15]

The industry specific broadcast tax should be removed. Removing the broadcasting tax would create a level financial playing field enabling Australian broadcasters to make the significant investments in digital platforms and assets needed to compete with global players.

Multinational Tax Avoidance

The Discussion Paper notes that:

> *"To maintain the integrity and fairness of our tax system, it is important to ensure that companies that conduct business in Australia pay tax in Australia."*[16]

Free TV strongly agrees. While it is unclear how much tax is being lost by the Australian Government due to multinational tax evasion and minimisation, Free TV notes the following media reports:

- In February this year the SMH Business Day reported that while Google should be paying at least $136 million in tax in Australia (on an approximated profit before tax of $454 million), it is actually paying less than $500,000.[17]

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[12] Source: Venture Consulting, Licence Fees: The Australian regime is a global outlier and an outdated holdover from a spectrum-dependant broadcast environment that no longer exists, 2014.

[13] *Television Licence Fees Act 1964*, s 6.

[14] Venture Consulting, Op. Cit., 2014.

[15] Ibid.

[16] Discussion Paper, at 82.

[17] SMH Business Day, *Google paying a fraction of the tax in Australia it should*, Michael West, 9 February 2015.

Google's local ad revenues have been estimated to be in the vicinity of $2 billion.[18]

- In March this year the ABC reported that while Australians have bought $27 billion worth of Apple products since 2002, the company has paid only $193 million to the Australian Tax Office during that time, just 0.7 per cent of its turnover. It estimated that approximately $9 billion in profits has been shifted offshore to minimise tax.[19]
- In May this year the ABC reported that multinational corporations operating through tax havens may be paying an effective tax rate of as little as 15 per cent.[20]

Free TV Australia understands that the Government has taken steps to ensure global players pay their fair share of tax in Australia, including by:

- Initiating an inquiry by the Senate Standing Committee on Economics in relation to tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia. Free TV understand that the Committee is due to report on 15 June 2015;
- Announcing the introduction of the *Tax Laws Amendment (Tax Integrity Multinational Anti-Avoidance Law) Bill 2015* to stop multinational entities using artificial or contrived arrangements to avoid a taxable presence in Australia;
- Supporting the G20 OECD global standard and action plan to combat offshore tax evasion.
- Announcing the extension of the GST to offshore intangible supplies such as digital content, games and software, as part of the 2015-16 budget.

Free TV supports these moves to reform the tax system so that it applies equally to all companies doing business in Australia.

In addition, Australia should cut its corporate tax rate in order to stay competitive. As acknowledged in the Discussion Paper, Australia has a relatively high company tax rate of 30 per cent.[21] Countries around the world have reduced their company tax rate in recent years and strengthened their integrity rules to counter multinational tax planning.[22] For example, Canada in 2012 cut its corporate tax rate to 15%,[23] and the UK cut its corporate tax rate to 20% effective from April 2015.[24] However, it is important that any cut to the corporate tax rate in Australia is not countered by other measures that increase the overall tax burden on business.

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[18] ABC, The Drum, *Googling a solution for raising tax revenue*, Peter Lewis and Jacquie Woods, 10 March 2015.

[19] ABC, *Apple pays $193m tax in Australia on $27b revenue as Federal Government vows to capture lost taxes*, Will Ockenden, 7 March 2014.

[20] ABC The Drum, Document reveals multinationals should pay, Ian Verrender, 4 May 2015

[21] Discussion Paper, at 30.

[22] Discussion Paper, at 26.

[23] From Canada Revenue Agency, see http://www.cra-arc.gc.ca/menu-eng.html

[24] From UK HM Revenue and Customs, see https://www.gov.uk/government/organisations/hm-revenue-customs

Producer Offset

The Producer Offset is a refundable tax offset that was introduced in July 2007 as part of the Australian Screen Production Incentive (ASPI), the Australian Government's package of measures to boost support for the Australian film and television industry. One of the key aims of the Offset was to assist Australian producers to build stable and sustainable production companies.[25]

The producer offset for television is only 20% while for feature films the available offset is 40%. There is no reason for this regulatory disparity.

The final report of the Convergence Review noted that there was significant support for raising the Offset level for television so that it is consistent with the rate for feature films and recommended that;

> *"Premium television content exceeding a qualifying threshold should attract the 40% offset available under the producer Offset Scheme. This will bring premium television content in line with the current rate of the offset available for feature film production."*[26]

Free TV strongly agrees with this recommendation, particularly in the context that:

- Television has greater reach and popularity with Australians than film.
- The premium Australian television content produced for television is equally valuable to viewers, and contributes to a vibrant and successful production sector in the same measure as content produced for feature films.
- Broadcasters employ large numbers of Australians on in-house productions, in many cases providing valuable training that is used later throughout the industry and importantly providing permanent employment opportunities (which are otherwise rare in the arts/media sector).

The offset for television content should be brought into line with the current rate for feature films, to reflect the level of investment made by the producer rather than where the content is first shown.

The impact of this reform will be:

- To encourage investment in the Australian production industry.
- Additional incentives for investment in Australian content.
- Likely increase in volume and quality of Australian content available on television.

Conclusion

Free TV thanks the Government for the opportunity to contribute to the important issues raised in the Discussion Paper.

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[25] Screen Australia Report, Getting Down to Business – The Producer Offset five years on, 2012.

[26] Department of Broadband Communications and the Digital Economy, Recommendation 16, Convergence Review Final Report, March 2012.

Free TV supports reforming the tax system to ensure that it does not place local media organisations at a competitive disadvantage compared with its multinational competitors.

Reform in this area is important to ensuring that free-to-air television can continue to provide high quality Australian content and support local jobs and the Australian production sector.