AUSTRALIAN COUNCIL FOR THE DEFENCE OF GOVERNMENT SCHOOLS
PRESS RELEASE 702#

THE TAX SYSTEM AND STRUCTURAL EDUCATIONAL INEQUALITIES

The Australian Tax System – Full of holes for the Rich

The Australian tax system has been corrupted systematically by the wealthy in their favour. They have employed accountants and lawyers for generations to engage in systematic, legal methods of avoiding tax (as opposed to taxation evasion which is illegal).

These schemes, rampant in the Australian taxation system, have deprived the public treasury of billions of dollars of revenue that could and should be used for public services like health and education.

They have done this in the last half century with the blessing of the Australian High Court, particularly the BARWICK Court. When Justice Lionel Murphy attempted to blow the whistle on transfer pricing in corporate avoidance with the *Comalco* case in he was hounded to his death in 1986.

In those days, 33years ago, the doyen of government finance analysis, Professor Russell Mathews, Director of the Centre for Research in Federal Financial Relations at ANU, described the taxation system as "rotten" because "…it would be difficult to improve on the present arrangements if we deliberately set out to design a tax system that requires the poor to pay more taxes than many of the rich…". [*The Mythology of Taxation*, June 1984] He observed that personal income tax has become a voluntary tax for the rich:

But the ordinary working Australians, Howard 'battlers' still wanted services, so in 1999/2000 Howard, with the help of Meg Lees from the Democrats, persuaded Australian taxpayers that the GST, an unfair transaction tax which impacts more on the poor than the rich, was necessary for the future of their public education and health system. So we are saddled with the GST while the wealthy continue to amass further privileges. And the Federal Government is still complaining at the lack of money for an equitable public education and health system!

The most obvious method used by wealthy families to avoid the tax system – since the Middle Ages in fact- are family trusts. And this method also enables wealthy families to pay outrageous fees for a privileged education for their offspring. In the 1970s DOGS blew the whistle on Prime Minister Fraser's 'family trust'. But Fraser was only a symptom, not the full blown disease.

Family Trusts Exposed by the Fairfax Media

The Fairfax Media has recently exposed in four articles, the tax minimisation by the rich which is undermining our egalitarian, democratic society. See:

Royce Millar & Ben Schneiders, The tax minimisation tool that nobody wants to talk about, The Age, 6 April 2017

Royce Millar & Ben Schneiders, Whatever you do, don't mention the trusts, The Age, 9 April 2017

Royce Millar & Ben Schneiders, Maybe this is why politicians won't act on family trusts, The Age, 10 April 2017

Royce Millar & Ben Schneiders, Australia dodges international crackdown on trusts, The Age, 12 April 2017

Dale Boccabella, Trusts – the hidden tax lurk that really needs fixing, The Age, 11 April 2017

Trevor Cobbold of *Save our Schools* has analysed these articles as follows:

Tax Dodges and Subsidies for the Rich Rob Funding for Disadvantaged Schools

These Fairfax articles highlighted the use of secretive family trusts by the wealthy to reduce their tax payments. It is more evidence of how the avarice of the rich is robbing disadvantaged schools and other public services of much-needed revenue.

According to the University of NSW tax law expert, Dale Boccabella, tax avoidance through family trusts is reducing government taxation revenue by at least $2 billion a year. Almost all this goes to the richest families in Australia. Data released by the Australian Tax Office (ATO) shows that almost 90 per cent of trust assets are held by the wealthiest 20 per cent of income earners.

Boccabella said that his estimated loss of revenue of $2 billion a year is a conservative estimate of 200,000 trusts (less than one third of the total) currently saving $10,000 each per year through tax perks. He acknowledged that the loss could be much greater.

As far as we are aware, this is the first expert estimate for many years of the loss of tax revenue through family trusts. Family trusts are shrouded in secrecy. There is not even a public register of family trusts in Australia.

Transparency campaigners say the veil of secrecy around trusts in Australia is shielding tax rip offs, corruption, money laundering, even terrorism. The chief executive officer of Transparency Australian, Serena Lillywhite, said last week that the "veil of secrecy" around trusts makes it "an easy way to hide millions of dollars".

The new estimate shows that the use of secretive family trusts is one of the major forms of tax avoidance by the rich. It adds to the billions in tax concessions for superannuation, negative gearing, and capital gains that primarily benefit the wealthy. The annual loss of revenue from just these four tax concessions amounts to about $35 billion a year. In addition, the wealthy are avoiding paying tax by rampant use of tax havens overseas to hide their assets and income.

The cost of this tax avoidance is borne by the rest of the community through inadequate government funding for schools, TAFE and universities as well as for other services such as health care, mental health, public housing, unemployment benefits and so on. For example, the Federal Government claims that it cannot afford to fund the $7 billion planned for the last two years of the Gonski school funding plan. Yet, the Prime Minister said last week that the Governments has no plans to reform family trusts. As a report in the Fairfax press commented, "Given the potential windfalls to public coffers, failure to look to this way is puzzling".

To compound the injustice, the richest families in Australia also benefit from nearly $1 billion a year in government funding for the elite private schools they send their kids to. Not only do the wealthy avoid paying tax, but they get huge subsidies out of the taxes paid by the rest of the community. The sheer scale of the avarice is something to behold.

There are 163 private schools in Australia with annual fees of over $15,000 per student. Some 95% of these schools have over 50% of their students from the top socio-economic advantage (SEA) quartile and less than 5% from the lowest quartile. Total government funding for these schools amounted to $874 million in 2015 and contributes to their massive resource advantage over public schools. Their average total income per student was just under $30,000 compared to the average total income per student in public schools of $13,167.

Many of these wealthy schools receive millions in taxpayer funding. For example, Ascham School in Sydney with fees of $34,155 per student in 2015 and 87% of its students in the top SEA quartile received $3.6 million in government funding. Sydney Grammar school with fees of $32,362 per student in 2015 and 98% of its students in the top SEA quartile received $4.2 million from the taxpayer. Wesley College in Melbourne with fees of $27,671 per student and 75% of its students in the top SEA quartile received $12.2 million in government funding. Scotch College in Melbourne with fees of $26,897 per student and 84% of its students from the top SEA quartile received $6.3 million. Caulfield Grammar school with fees of $24,618 and 65% of its students in the top SEA quartile received $14.9 million.

It is a disgraceful injustice and an inexcusable waste that such schools should continue to receive government funding while disadvantaged public and private schools are denied adequate funding and face severe shortages of teaching staff and educational materials. Yet, the avarice of the wealthy in avoiding tax through family trusts and other tax concessions goes unchallenged by governments while the rest of the community, especially disadvantaged families, suffers from inadequate services.

New information on family trusts supplied by the ATO and published by Fairfax Media last week show that there were almost 643,000 discretionary trusts (most family trusts are this kind) in Australia in 2014-15. They hold assets upwards of $600 billion, and generate profit of almost $80 billion.

Trust income is taxed only when it is distributed to beneficiaries of the trust. Trusts are a legal means of handling personal, business and family finances, and Australia has many forms of them, some of which are devoted to looking after people with disabilities, and children. However, as a report in the Fairfax press stated, the vast majority of family trusts "appear to have no purpose other than to minimise tax".

Family trusts enable high-income earners to split trust income and distribute it to family members on low incomes and low tax rates – adult children at university for example. In the process, the high-income earner can slash their own tax liability so that they pay no tax or a minimal amount. The distribution of income can be varied each year. So, if a child leaves university and secures a well-paid job, their share can be transferred to a younger brother starting university, or a retired grandmother.

Australia has failed to comply with its international obligation to crack down on family trusts, despite concerns they could be misused for tax evasion, money laundering and the financing of terrorism. Despite signing up five years ago to a multinational agreement to force greater transparency on companies and trusts, documents obtained by Fairfax reveal Australia has done little, if anything, to act on trusts, including avoiding moves to identify the true financial controllers behind them.

Pressure to act is mounting, including from the Organisation for Economic Cooperation and Development (OECD). Last year, the head of tax at the OECD called on countries to prise open information about trusts. He called on countries to establish new registers of company and trust ownership. It should be a priority for the Coalition Government and the Labor Opposition.

However, the Prime Minister's response to the Fairfax revelations was to defend the use of family trusts as a legitimate business structure and say that the Government has no plans to make changes. Leader of the Opposition, Bill Shorten, was nowhere to be seen on the issue. However, as Assistant Treasurer in the Gillard Government, he said that "We accept that trusts are legitimate business vehicles for farmers and the like". Neither the Coalition nor Labor have policy positions on the taxation of family trusts, except to ignore it.

Perhaps this should be no surprise. Federal politicians and their spouses are using family trusts more than any parliament before them according to the Fairfax press. Nearly half all Coalition MPs have a personal or family interest in a discretionary trust compared to 5% of the general population. Senior cabinet members including the treasurer, Scott Morrison, finance minister Kelly O'Dwyer, foreign minister Julie Bishop, employment minister Michaelia Cash and immigration minister Peter Dutton have trusts. Labor MPs use trusts much less than Coalition members, but the proportion of Labor MPs with trusts is growing. Some 21 Labor MPs or families now have trusts. They include deputy leader Tanya Plibersek and shadow attorney general Mark Dreyfus. South Australian senator Nick Xenophon and Victorian senator Derryn Hinch are prominent crossbenchers with a trust.

As a former tax officer, Rod Caldwell, told Fairfax: “It’s not surprising they (the MPs) are reluctant about reform and legislating to rein in trusts. You’re asking them to legislate against their own hip pocket interests.”

However, it is not just the personal interests of MPs that squash action to make the wealthy pay tax. It is the political and economic power of those who benefit from the concessions. Their rapacious rorting of the tax system is robbing governments of revenue needed to provide a viable safety net for the poor and to provide quality services such as schooling for the whole community.

....tax authorities, governments and the courts have allowed tax avoidance to flourish on such a scale as to make personal income tax a voluntary tax for the rich non-salary earner. [The Structure of Taxation, January, 1980]

The Fairfax reports last week demonstrate that not much has changed since the 1980s. What has changed is that the wealthy have gained the additional benefit of a massive increase in government funding for the private schools that their children attend.

Trevor Cobbold