Centre for International Corporate Tax Accountability and Research

Does DP World dodge taxes in Australia?

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KEY POINTS

• DP World's top Australian subsidiary has paid zero corporate income tax over the last eight years – and likely longer – despite revenues of more than $4.5 billion over that period.

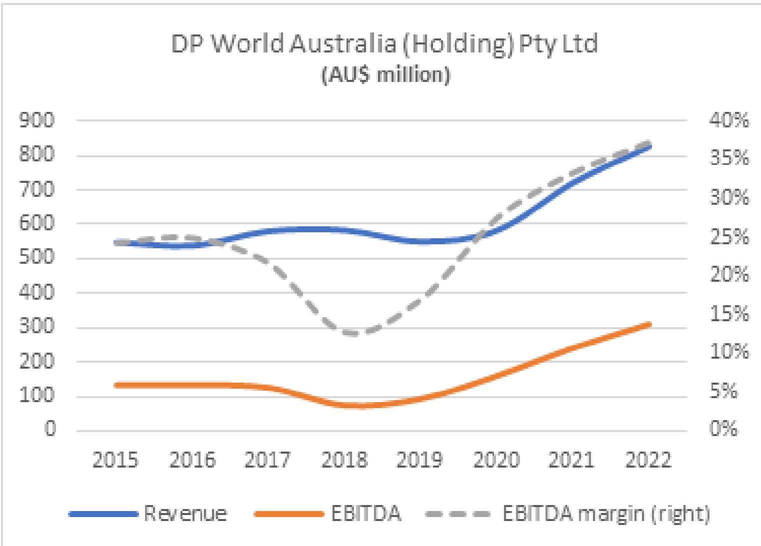
• DP World appears to use a mix of related party debt transactions, inflated management service fees and other possible schemes to artificially reduce taxable income in Australia.

• Three related party payments, presumably via tax havens, were equivalent to 120% of the 2022 operating income of DP World's Australian port business.

• DP World's ownership structure relies in Australia relies on extensive use of shell companies in tax havens, including the Netherlands and the Cayman Islands to shift income back to the investors and the parent company in Dubai, where the tax rate has been zero.

CONTEXT

With US$17 billion in 2022 revenue, DP World is one of the world's largest port operators, and one of the largest port operators in Australia.[1] However, DP World's top Australian subsidiary has paid ***ZERO in corporate income tax over the last 8 years*** (2013/14-2020/21) while it generated AUD$4.5 billion in total revenue and holds over AUD$2.4 billion in assets.[2] By all appearances, DP World's port operations in Australia – as around the world – are highly profitable. As the graph indicates, DP World's Australian port business has had high and increasing profit margins over the last 8 years. The EBITDA margin (2015-2022) has averaged 25%.[3]



DP World Australia (Holding) Pty Ltd has had annual total revenue of over AUD$550 million in every year but one ($543m in 2014/15) and consistently ranked in the top 500 or 600 largest corporations in Australia. Its 2022 revenue was nearly AUD$830 million. If DP World has artificially reduced profits in Australia to avoid corporate income tax payments, a conservative estimate suggests DP World may have short changed Australia – and funding for health, education and other public services – by more than $330 million over the 8-year period.[4]

So how does DP World avoid tax payments in Australia? The following are a few possible clues about what might be happening to artificially reduce reported profits in Australia to the point that no tax is paid. So while DP World appears to reap huge benefits from Australia and takes advantage of public services and infrastructure, it gives nothing back except the wages paid to employees.

OWNERSHIP AND CORPORATE STRUCTURE

DP World, which is ultimately 100% owned by the Dubai Government, has an ownership interest in DP World Australia (Holding) Pty Ltd of only 33.14% but maintains control of the Australian business.[5] About half (48.5%) of DP World's stake in the Australian port business is directly owned by DP World Australia B.V., a shell company incorporated in the Netherlands. Another 11.75% of the shares are held by an Australian entity, WAPT Pty Ltd, which in turn is owned by the Dutch shell company.[6] The government pension fund of the Canadian province of Quebec, the Caisse de Depot et de Placement du Quebec (CDPQ), owns a 45% interest in DP World Australia BV in the Netherlands. CDPQ has billions invested with DP World in ports around the world.

Just under 40% of the shares (39.75%) in DP World Australia (Holding) Pty Ltd are owned through 6 investor funds via PO Box 309 at the notorious Ugland House in the Cayman Islands.[7] These funds are managed by global infrastructure investor Corsair Capital.[8] On paper, Ugland House is home to tens of thousands of corporations and former US President Barack Obama called it "the largest tax scam in the world."[9]

Clearly, these major global investors would be extremely disappointed if the investment in DP World's Australian ports were not generating significant returns.

This extensive use of shell companies in tax havens may help to explain how DP World has paid zero corporate income tax over at least an 8-year period, likely longer and continuing to the present. Over this 8-year period, DP World has been subject to a tax rate of 0% in its home country.[10] Dubai, along with the Netherlands and the Cayman Islands, is widely regarded as a tax haven.[11]

CURRENT DETAILS ON AUSTRALIAN OPERATIONS

DP World Australia (Holding) Pty Ltd's 2022 financial statements report increasing revenues but don't indicate any current tax payments. The pattern of no tax payments over the 8-year period of ATO data appears to have continued to the present. In 2022 revenue climbed to $829.5 million, up from $723.7 million in 2021.[12] After deducting expenses, results from operating activities were $236.9 million (2021: $165.8m).[13] However, DP World appears to have used a mix related party debt transactions, inflated management service fees, and possibly other schemes to artificially reduce taxable income.

Finance costs reduced pre-tax profits to $165.3 m (2021: $86.2).[14] Reported profits were further reduced by an income tax expense of $53.9 million, compared to an income tax benefit of $86.2 million in 2021.[15] However, no tax was paid. The cash flow statement, which typically reports on actual tax payments, does not indicate any income tax was paid. The tax expense appears to be only for accounting purposes. The notes to the financial statements further indicate no tax expense for the current year in either 2022 or 2021. The income tax expense in 2022 was derived from "Utilisation of previously recognised tax losses of $64 million, reduced by a tax benefit of $10.1 million from "Origination and reversal of temporary differences".[16] It is unclear exactly what this means and how it works, but previous losses have been used to eliminate current tax liabilities.

In what appears to be a longstanding pattern, once again, financial engineering has completely eliminated income tax payments in Australia.

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These practices, no doubt, kept the auditor KPMG Australia busy. KPMG was paid $455,862 for audit services and additionally paid $394,525 for "Income tax compliance/advice" in 2022.[17] Many financial experts would be concerned of a conflict of interest in the same firm providing both audit and tax advisory services. This practice is outlawed in other jurisdictions.[18]

Clearly, related party debt payments, a typical practice of multinational corporations, did reduce taxable income in Australia and helped to limit income tax payments entirely in 2022, 2021 and likely for many years prior. The cash flow statement shows that $30.7 million was paid each year as interest payments to related parties in both 2022 and 2021.[19] It also shows repayment of related party borrowings of $235 million in 2022 and $109 million in 2021.[20]

These repayments of capital were presumably on the unsecured related party loans of $776.3 million in 2022, down from $1,011.3 million in the previous year.[21] The interest rate of 6.12% on the bulk of related party debt, repayable in May 2029, appears to be significantly higher than the interest rate on the smaller third-party bank loans.[22] A portion of the related party debt, $274 million, is interest-free and repayable November 2029, but the "lenders may request early repayment… [with] a 15 months notice period".[23] This may enable future tax offsets.

The filings don't indicate who or where the related party lenders are, but presumably this is offshore, within the sprawling global DP World empire in another jurisdiction where no tax is paid on interest income. The effect of these transactions is to reduce taxable income in Australia, meanwhile tax-free interest income is shifted offshore.

Another related party transaction that is disclosed is a management fee expense of $17.6 million in 2022, with a further management fee expense outstanding of $13.8 million.[24] The management fee expense in 2022 was significantly higher than the $7.4 million in 2021.[25] These management fees had the effect of reducing taxable income in Australia and shifting profits offshore. There may be other schemes at work in DP World Australia to artificially reduce reported profits and eliminate all income tax payments.

Some simple comparisons of the 2022 reported figures, help to demonstrate the impact of these possible tax avoidance schemes. The repayment of $235 million in related party debt was equivalent to 99% of the reported operating income of $237 million. If the related party interest payments of $31 million and the management fees of $18 million are also included (not including the $14 million in management fees balance outstanding), these related party expenses are equivalent to 120% of the 2022 operating income. It appears that shifting money to related parties offshore continues to artificially eliminate DP World's tax liabilities in Australia. How long can this continue, while Australia's schools and hospitals remain grossly underfunded?

For context on some of the legitimate business expenses in Australia, total personnel expenses were $300.1 million in 2022, which was equivalent to only 36% of the revenue from services.[26] These personnel expenses, covering 1,926 employees, may also include payments to key management personnel of $2.4 million in 2022.[27] Of the revenue from operating container terminals at Australia's key ports, 40% came from Sydney, 33% from Melbourne, 19% from Brisbane and 9% from Fremantle.[28]

TIME FOR CHANGE

Given access and control of critical infrastructure is vital to Australia's imports, exports and connections to the global economy, DP World should be required to pay a fair share of income tax as do most domestic businesses.

DP World's apparent ability to shift profits offshore, may give the government and investor-owned entity a critical and unfair advantage over other businesses operating in Australia. All businesses have an obligation to contribute to the funding of public services which are essential to the business operations and broader social and economic welfare. Apparent examples of profit shifting by major global corporations such as DP World undermine the integrity of the tax system and more broadly trust in government and public institutions.

DP World provides another example of why the Australian government, as promised, must legislate full and complete public country by country reporting for all multinationals operating in Australia. This simple transparency measure would allow all stakeholders to see where corporations have legitimate operations and where profits are artificially shifted. Increased transparency and public scrutiny would add pressure to reduce aggressive tax avoidance practices and inform governments about reforms needed to close loopholes that multinationals, such as DP World, exploit to avoid the obligation to fund the essential public services that we all rely upon.

ENDNOTES

1 DP World, Annual Report and Accounts 2022, p.2 Financial Highlights. https://www.dpworld.com/-/media/project/dpwg/dpwg-tenant/corporate/global/media-files/investor-relations/financials-and-presentation/financial-reports/annual-results/2022---annual-report-2022_eng-web.pdf?rev=bdb14016e38f4050ade0124dbcfdb866

2 There are now 8 years of ATO corporate tax data, which can be accessed here: https://data.gov.au/data/dataset/corporate-transparency ; The head of the consolidated tax group covering DP World's Australian port operations is DP World Australia (Holding) Pty Ltd. Total asset value from DP World Australia (Holding) Pty Ltd, 2022 Annual Report, p.1.

3 Data extracted from proprietary commercial service and based on company filings. EBITDA is earnings before interest, taxes, depreciation and amortisation. Corporations frequently report on EBITDA as a more accurate reflection of underlying business performance and it is the indicator of profits most commonly used by analysts.

4 The estimate applies DP World's 2022 Adjusted EBITDA margin of 29.3% to the Australian total income of $4.5 billion to get an estimate of what taxable income might have been over the 8 years and applies a tax rate of 25%. The statutory tax rate in Australia is 30%. Adjusted global EBIDTA margins for DP World have been significant higher over the last 5 years, up to 49.7% in 2018. Applying the 5-year average global adjusted EBIDTA of 39.3% and using a tax rate of 30% provides a tax loss estimate of $535.4 million. EBIDTA figures are on p.2 of DP World's 2022 annual report in the Financial Highlights.

5 DP World 2022 Annual Report, p.140 Note 27.

6 Information from current company extracts purchased from ASIC on the two Australian entities.

7 Current company extract reports on shares owned by Corsair managed funds via the Cayman Islands.

8 https://corsair-capital.com/portfolio-infrastructure

9 https://foreignpolicy.com/2012/01/24/house-of-19000-corporations/

10 DP World, Annual Report and Accounts 2022, pp.112-114 Note 8 Income Tax.

11 https://cthi.taxjustice.net/en/cthi/profiles?country=AE&period=21 ; The United Arab Emirates (UAE), of which Dubai is a part, has announced a new 9% corporate income tax rate (an increase from zero) which was scheduled to go into effect June 2023.

12 DP World Australia (Holding) Pty Ltd, Annual Financial Report for the year ended 31 December 2022, (purchased from ASIC) p.6, Income Statement.

13 Ibid.

14 Ibid.

15 Ibid.

16 Ibid, p.24 Note 7 Income tax.

17 Ibid, p.36 Note 26 Auditor's remuneration.

18 Nassim Khadem, ABC News, 27 September 2023, "Review of PwC tax leaks scandal will not stop conflicts of interest engulfing consulting firms". https://www.abc.net.au/news/2023-09-27/pwc-tax-leaks-scandal-review-conflicts-consulting-firms-ato-tpb/102904272

19 DP World Australia (Holding) Pty Ltd, Annual Financial Report for the year ended 31 December 2022, p.10 Statements of Cash flows.

20 Ibid.

21 Ibid.

22 Ibid.

23 Ibid.

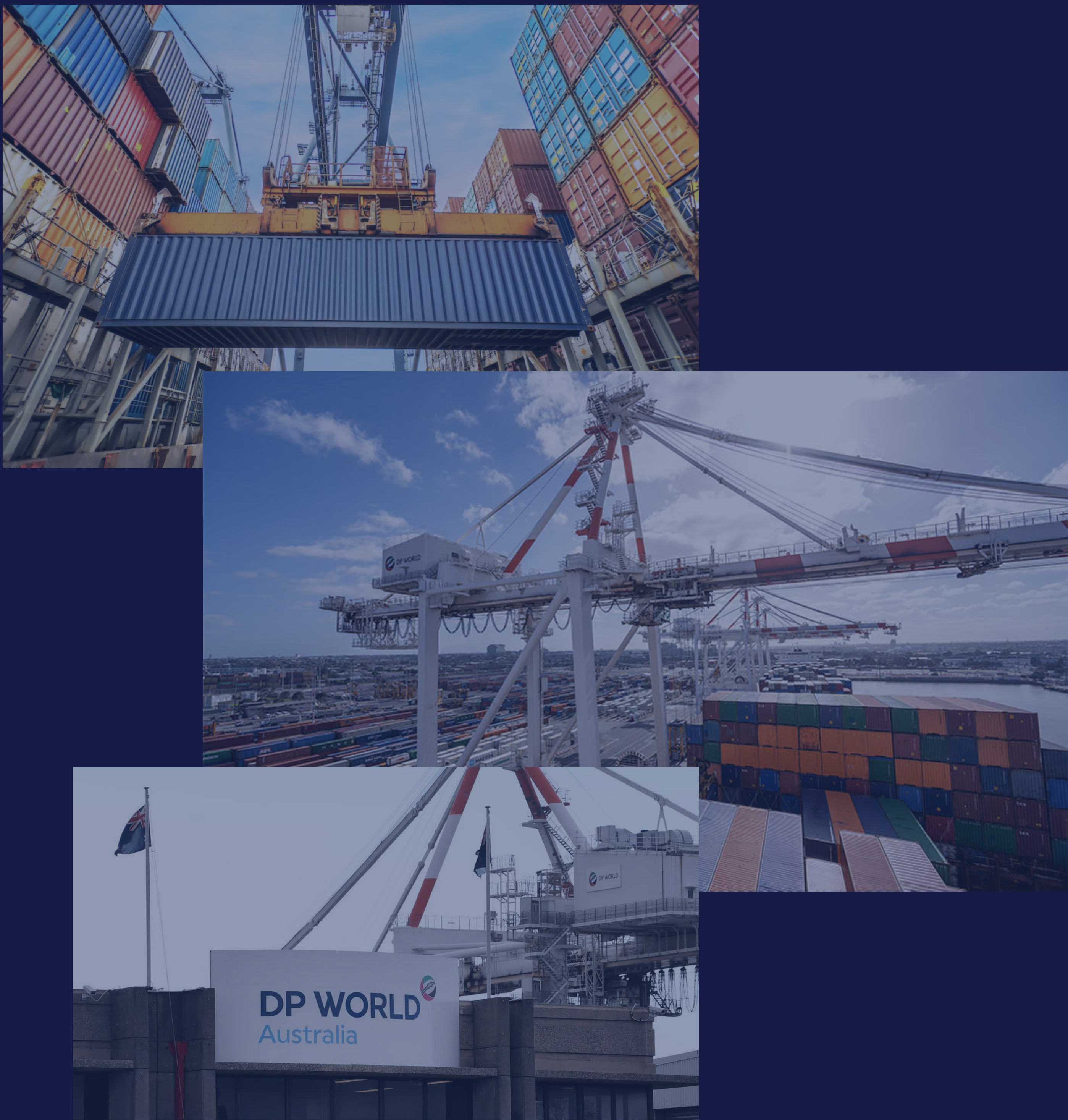
24 Ibid, p.35 Note 24 Related parties.

25 Ibid.

26 Ibid, p.23 Note 5 Expenses included in the statement of comprehensive income & Note 4 Revenue, calculations.

27 Ibid, p.34 Note 24 Related parties.

28 Ibid, p.23 note 4 Revenue.



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