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Submission on *Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018*
5 November 2018

The Tax Justice Network Australia (TJN-Aus) welcomes this opportunity to make submission on the *Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018*. The TJN-Aus comments relate to those parts of the Bill that relate to issues that TJN-Aus has been lobbying on, Schedule 4 and 7. The TJN-Aus is not able to comment on the other parts of the Bill.

The TJN-Aus supports Schedules 4 and 7 of the Bill.

Schedule 4

The TJN-Aus supports the objectives of Schedule 4 of the Bill to tighten Australia's thin capitalisation rules by:

- Requiring an entity to use the value of the assets and liabilities that are used in its financial statements;
- Removing the ability for an entity to revalue its assets specifically for thin capitalisation purposes; and
- Ensuring that non-authorised deposit-taking institutions foreign controlled Australian tax consolidated groups and multiple entry consolidated groups that have foreign investments or operations are treated as both outward investing and inward investing entities.

The TJN-Aus notes that artificially loading up debt is a key technique that multinational corporations use to shift profits out of the jurisdictions where they are doing business to low tax jurisdictions to avoid paying the tax they should be paying in the place they are actually doing business. Allowing interest repayments in intra-party loans to be claimed as a tax deduction facilitates this tax avoidance technique.

The TJN-Aus is concerned that the thin capitalisation safe harbour has been misused by corporations as giving them an acceptable limit of tax avoidance they are allowed to engage in through artificial debt loading through intra-party loans. In other words, the corporation makes a loan it does not need, as the financing in question could be provided through equity, from a low tax jurisdiction for the primary or sole purpose of avoiding paying tax in Australia through being able to claim interest repayments to itself as a tax deduction. In such circumstances the law should enable the ATO to actively investigate such intra-party loans and deny the deduction where a purpose of the intra-party loan is tax avoidance, even when the loan is below the thin capitalisation safe harbour. If this is not already possible under the general anti-avoidance rule, Part IVA of the *Income Tax Assessment Act*, then amendments should be made for this to happen.

Schedule 7

The TJN-Aus has been very supportive of the Australian Government implementing country-by-country reporting and of the *Multilateral Anti-Avoidance Law* and *Diverted Profits Tax*. Country-by-country reporting, *Multilateral Anti-Avoidance Law* and *Diverted Profits Tax* have all helped increase confidence in the tax system as well as assisting in getting large multinational corporations to pay more tax in Australia, when they are doing business in Australia.

The TJN-Aus is supportive that the amendments to the definition of significant global entity contained within this schedule ensure that the definition applies consistently to all types of entities, rather than potentially excluding members of large multinational groups headed by private companies, trusts or investment entities.

The TJN-Aus supports the definition of significant global entity in the *Income Tax Assessment Act 1997* being extended so that it:

- Applies to groups of entities headed by an entity other than a listed company in the same way as it applies to groups headed by a listed company; and
- Is not affected by the exceptions to requirements applying to consolidated or materiality rules in the applicable accounting rules.

The TJN-Aus also supports the amendments to modify the rules for entities that must undertake country-by-country reporting under Subdivision 815-E so that these rules apply to country-by-country reporting entities rather than significant global entities more generally, to ensure these rules are aligned with Australia's international commitments.

The TJN-Aus supports that if an entity does not have adequate global financial statements for a period, its annual global income for that period is the amount that would have been its annual global income if appropriate global financial statements had been prepared.

The TJN-Aus supports the amendments to require that country-by-country reporting entities need to include information on the other members of any country-by-country reporting group of which the entity is a member for the purposes of the country-by-country reporting provisions. The TJN-Aus supports that such entities must provide statements dealing with the global operations and activities and the allocation between countries of the tax paid by the group members of any notional listed company group of which they are a member.

The TJN-Aus supports the amendment that the obligation to provide general purpose financial statements for a financial year to the Commissioner of Taxation will apply to entities that are, among other things, country-by-country reporting entities.

The TJN-Aus supports the amendments in this schedule applying retrospectively from 1 July 2018 as announced in the Budget on 8 May 2018 to ensure Australia's multinational tax integrity rules apply as intended.

Ultimately, the TJN-Aus would like to see global country-by-country reporting extended to all multinational entities with over \$250 million in revenue.

Dr Mark Zirnsak
Secretariat
Tax Justice Network Australia

Background on the Tax Justice Network Australia

The Tax Justice Network Australia (TJN-Aus) is the Australian branch of the Tax Justice Network (TJN) and the Global Alliance for Tax Justice. TJN is an independent organisation launched in the British Houses of Parliament in March 2003. It is dedicated to high-level research, analysis and advocacy in the field of tax and regulation. TJN works to map, analyse and explain the role of taxation and the harmful impacts of tax evasion, tax avoidance, tax competition and tax havens. TJN's objective is to encourage reform at the global and national levels. The Tax Justice Network aims to:

- (a) promote sustainable finance for development;
- (b) promote international co-operation on tax regulation and tax related crimes;
- (c) oppose tax havens;
- (d) promote progressive and equitable taxation;
- (e) promote corporate responsibility and accountability; and
- (f) promote tax compliance and a culture of responsibility.

In Australia the current members of TJN-Aus are:

- ActionAid Australia
- Aid/Watch
- Anglican Overseas Aid
- Australian Council for International Development (ACFID)
- Australian Council of Social Service (ACOSS)
- Australian Council of Trade Unions (ACTU)
- Australian Education Union
- Australian Manufacturing Workers Union
- Australian Nursing & Midwifery Federation
- Australian Services Union
- Australian Workers Union, Victorian Branch
- Baptist World Aid
- Caritas Australia
- Centre for International Corporate Tax Accountability and Research
- Community and Public Service Union
- Electrical Trades Union, Victorian Branch
- Evatt Foundation
- Friends of the Earth
- GetUp!
- Greenpeace Australia Pacific
- International Transport Workers Federation
- Jubilee Australia
- Maritime Union of Australia
- National Tertiary Education Union
- New South Wales Nurses and Midwives' Association
- Oaktree Foundation
- Oxfam Australia
- Save the Children Australia
- Save Our Schools
- SEARCH Foundation
- SJ around the Bay
- Social Policy Connections
- TEAR Australia
- The Australia Institute
- Union Aid Abroad – APHEDA
- UnitedVoice
- Uniting Church in Australia, Synod of Victoria and Tasmania

- UnitingWorld
- Victorian Trades Hall Council
- World Vision Australia