Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
E-mail: economics.sen@aph.gov.au

Centre for International Corporate Tax Accountability & Research and Tax Justice Network – Australia and Publish What You Pay – Australia, Australian Nursing & Midwifery Federation (ANMF) and Public Services International Joint Submission on inquiry into the Government Amendments to *Treasury Laws Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Bill 2023*

22 December 2023

The Tax Justice Network Australia (TJN-Aus),the Centre for International Corporate Tax Accountability and Research (CICTAR), Publish What You Pay – Australia (PWYP), Public Services International (PSI) and the Australian Nursing and Midwifery Federation (ANMF) welcome this opportunity to make a joint submission to the inquiry into the Government Amendments to the *Treasury Laws Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Bill 2023*.

There could be further amendments to the Bill to improve the ability of the Bill to curb profit shifting and aggressive tax avoidance by multinational corporations. We have outlined these preferred reforms in our previous submissions on the Bill. However, at the current point in time, we urge that the Committee recommend that the Bill be passed through the Senate.

We are concerned that the Bill has been the target of a concerted campaign by some business groups and their allies to derail its passage. A key argument is that the Bill has not been the subject of enough consultation. However, the current inquiry is now the fifth inquiry or consultation into measures contained in the Bill:

- Treasury consulted on many of the measures in the Bill in September 2022;
- Treasury consulted on an exposure draft of the Bill in April 2023;

- The Senate Standing Committee on Economics conducted an inquiry into the Bill in July 2023; and,
- Treasury consulted on the debt creation measures in the Bill in October 2023.

We are concerned that those mounting the argument that there has not been enough consultation would instead prefer the Bill not proceed and are seeking every opportunity to delay its passage. Further, even if they cannot delay the passage, their hope may be to obtain as many amendments as possible to reduce the effectiveness of the Bill in reducing profit shifting and aggressive tax avoidance practices, such as debt loading from related entities to maximise interest repayments to itself that a group can claim as tax deductions in Australia. Thus, the submitting organisations believe further delays in the passage of the Bill are likely to increase the risks that the Bill is watered down or that it may not pass the current Parliament at all. It appears to us that there would be business organisations and their allies that support the latter outcome with their hope that the next Parliament will be even less inclined to legislate for closing loopholes exploited by multinational entities engaged in profit shifting.

The submitting bodies note that some of the business organisations are arguing against measures in the Bill because closing tax loopholes will deter investment decisions into Australia. The submitting bodies note the recent work by the OECD that found multinational entities were less sensitive to tax increases in jurisdictions where they exercise more market power.[1] Australia is a jurisdiction that has many sectors where a small number of multinational entities have substantive market power.[2] As noted by Rob Simms in his then role as chair of the ACCC, in Australia:[3]

> *Many markets are dominated by a small number of providers, including banking, supermarkets, mobile telecommunications, internet service provision, energy retailing, gas supply and transport, insurance, pathology services, domestic air travel, internet search and social networking services.*

The Australian private health care sector is another area where a small number of large multinational entities have gained and continue to grow and consolidate significant market power. As one example of this, CICTAR's recent report covers alleged tax avoidance by Brookfield on its ownership of Healthscope.[4] There are significant concerns about tax avoidance in the aged care sector as well.[5] As one example of this BUPA, at the time the largest aged care operator, reached a settlement with the ATO for $157 million in 2019.[6] There are major concerns about tax avoidance by suppliers of pharmaceuticals and medical equipment to the public health system as well.[7] All of these public health services are heavily

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[1] Tibor Hanappi and David Whyman, "Tax and Investment by Multinational Enterprises", OECD Taxation Working Papers No. 64, 2023, 9.
[2] Jonthan Hambur, "Product Market Power and its implications for the Australian economy", Treasury Working Power 2021-03, June 2021.
[3] Rod Simms, "Protecting and promoting competition in Australia keynote speech", Speech to Law Council of Australia's Competition and Consumer Workshop, 27 August 2021, https://www.accc.gov.au/about-us/media/speeches/protecting-and-promoting-competition-in-australia-keynote-speech
[4] https://cictar.org/all-research/brookfield-canadas-largest (see pp.17-20)
[5] Jason Ward, "Tax avoidance by for-profit aged care companies: profit shifting on public funds – proposals for transparency on Government Spending", A Tax Justice Network – Australia Report. https://www.anmf.org.au/media/i1tpu5vk/anmf_tax_avoidance_full_report.pdf
[6] Christopher Knaus,"Bupa reaches $157m settlement with tax office after decade-long dispute", *The Guardian*https://www.theguardian.com/australia-news/2019/mar/08/bupa-reaches-157m-settlement-with-tax-office-after-decade-long-dispute
[7] Two examples of this, based on CICTAR analysis include German healthcare multinational Fresenius and Australia's CSL both large suppliers of medical equipment and pharmaceuticals to the

reliant on government funding and it is imperative that all loopholes, including thin capitalisation, are closed to ensure adequate funding for public services.

The Royal Commission into Aged Care Quality and Safety found that the funding, finance, and prudential regulation of Australia's aged care sector is marred by opacity and reporting that limits external oversight and regulation. Multiple CICTAR reports, in Australia and globally, have found that real estate - and financing related to real estate - are frequently used to shift profits and avoid taxation.[8]

With the market power exercised by many multinational enterprises in Australia, legislation that curbs forms of profit shifting and tax avoidance is likely to have less impact on investment than in other jurisdictions where such enterprises have less market power.

The OECD research also found that multinational enterprises with higher liquidity were less sensitive to any increase in effective tax rates.[9] They further found that multinational enterprises' investment decisions were less sensitive to tax rate increases when they could profit shift within the group.[10] The finding suggests that the less effective a legislative change in addressing profit shifting and tax avoidance, the less impact it will have on investment decisions.

While we would argue that stronger legislation could be designed to further close loopholes and ensure adequate funding for public services and a level playing field for all businesses, we support this legislation as it stands and recognise that it is a positive step forward.

Australian government and public health systems. See here: https://cictar.org/all-research/fresenius-failing-to-care ; Ben Butler, "Australian biotech company CSL accused of shifting $5bn in revenue to Switzerland", *Herald Sun,* 11 September 2023.
https://www.heraldsun.com.au/business/companies/australian-biotech-company-csl-accused-of-shifting-5bn-in-revenue-to-switzerland/news-story/c8ecd60fd785124ecdf6bc23bff706cd ; Additionally there is current and ongoing controversy around profit shifting by other Big Pharma companies, including Pfizer, see here: John Kehoe, "Pfizer paid little tax on $1.4b in COVID vaccine sales", *Australian Financial Review,* 18 December 2023, https://www.afr.com/policy/tax-and-super/pfizer-paid-little-tax-on-1-4b-in-covid-vaccine-sales-20231204-p5eovc

[8] https://cictar.org/research-themes#care

[9] Tibor Hanappi and David Whyman, "Tax and Investment by Multinational Enterprises", OECD Taxation Working Papers No. 64, 2023, 20.

[10] Ibid., 21-23.

Jason Ward
Principal Analyst
CICTAR
Phone: [redacted]
[redacted]

Dr Mark Zirnsak
Secretariat
Tax Justice Network Australia
[redacted]
Phone: [redacted]
[redacted]

Tom Reddington
Sub-regional Secretary for
Oceania Australia
[redacted]

Mia Pepper
National Director
Publish What You Pay Australia
[redacted]

Lori-Anne Sharp
Acting Federal Secretary
Australian Nursing & Midwifery Federation
[redacted]