



Board of Taxation Secretariat
The Treasury – Sydney Office
Level 5, 100 Market Street
Sydney NSW 2000
E-mail: taxboard@treasury.gov.au

Tax Justice Network Australia Submission on the Post-Implementation Review of the Tax Transparency Code

26 March 2019

The Tax Justice Network Australia (TJN-Aus) welcomes the opportunity to make a submission to the Board of Taxation ‘Post-Implementation Review of the Tax Transparency Code’. It is welcome that the Board is encouraging businesses to make a greater effort to explain their tax affairs. While the proposed changes offer some improvements on the Tax Transparency Code, the TJN-Aus struggles to see what effective purpose the Code serves. It is particularly disappointing the Board opposes corporations voluntarily disclosing any part of their country-by-country reports required to be produced by Australian law in compliance with the OECD standards.

The TJN-Aus maintains the view that Government should continue to increase mandatory disclosure measures to level the playing field between those businesses that lead by example with accurate voluntary disclosures and those that continue to hide behind a veil secrecy over their tax affairs.

While the content of the Code has added some additional tax information for some companies that choose to comply with the Code, disclosures compliant with the Code still do not allow the community to gain a picture of if the location of a company’s profits are being “taxed where the economic activities deriving the profits are performed and where value is created.”¹ This is contrary to what has largely already required been a mandatory measure in the EU for financial institutions.

Further, the Code continues to be undermined by the decision there is no requirement to verify the information in the reports and no penalties for companies making false or misleading reports. It would seem obvious that a company wilfully engaged in tax avoidance or aggressive tax planning that is skirting what might be legal, would be likely to have little concern about making false or misleading reports against the Code if they believe no one will detect that the information is false or misleading and where no penalty exists for doing so. This results, understandably, in a high degree of scepticism about the value of the Code in sorting out which companies are fully compliant with their tax obligations and those that seek to aggressively minimise their tax with measures that may be illegal if tested in a court of law.

It is a step forward for the Code to require that corporations include a ‘basis of preparation statement’ as a new minimum standard, but disappointing that the Code will continue not to require any external/audit assurance.

¹ G20 Leaders’ Communique, Brisbane Summit, 15-16 November 2014, p. 2.

It is a welcome step forward that corporations be encouraged to reconcile their accounts with the ATO disclosures, so that the public and shareholders can gain a better understanding in any apparent differences between the two.

Royalty payments should not be included in the Code, as these are usually not taxes. For example, in the case of mineral deposits, these are payments a mining company makes to the owner of the deposit (in this case a government), to purchase this raw material. We oppose the efforts of some mining corporations and industry bodies to mislead the public by presenting payments for raw materials in the form of royalties as tax payments, simply because the payment is made to a government.

The TJN-Aus welcomes that the Board will ask corporations to distinguish taxes collected on behalf of others from the tax paid on behalf of the business itself.

The TJN-Aus strongly welcomes the Board recommendations that businesses disclose through the Code:

- Information regarding material tax disputes with the ATO, to the extent they are not already disclosed in annual financial statements;
- Information regarding the structure and composition of the group and approach to tax structuring, including:
 - Name and place of incorporation of all subsidiaries in the group (where not already disclosed in financial statements);
 - Explanation of activities undertaken in no or law tax jurisdictions; and
 - The business' approach to allocation of value between international related parties.
- Information on the business' approach to cooperative compliance with the ATO and other tax authorities.

Dr Mark Zirnsak
Secretariat
Tax Justice Network Australia
c/- 29 College Crescent
Parkville Victoria 3052
Phone: (03) 9340 8807
E-mail: mark.zirnsak@victas.uca.org.au

Appendix: 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