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Submission on *Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Bill*
8 June 2018

The Tax Justice Network Australia (TJN-Aus) welcomes this opportunity to make submission on the *Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Bill 2018*. TJN-Aus welcomes Australian Government action to address the problem of hybrid mismatches and their misuse by some corporations to avoid paying taxes in the places where business is really being conducted. TJN-Aus supports the passage of the *Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Bill 2018*. It should be noted that the TJN-Aus has only focused on the parts of the Bill that address hybrid mismatches.

TJN-Aus notes that the OECD has estimated the global revenue loss to governments from base erosion and profit shifting (BEPS) to be conservatively between US\$100 billion and US\$240 billion a year, or between 4% and 10% of global corporate income tax revenues. Thus it is important that the Australian Government makes an effective contribution to multilateral efforts to address BEPS and ensure governments have revenue to provide for services to their communities such as health clinics, schools, mental health services, aged care and law enforcement.

There is a risk that there will be attempts to defeat the hybrid mismatch rules by the design of much more elaborate hybrid mismatches in order to circumvent the rules. The hybrid mismatch rules will require constant monitoring to ensure proper application. Resolving the arbitrage questions raised by hybrid payments, entities, and transfers is easier said than done. The complexity comes from attempts to narrow the range of transactions covered.

TJN-Aus supports the hybrid mismatch rules within the Bill coming into force by 1 January 2019.

TJN-Aus supports that the hybrid mismatch rules will apply regardless of whether the hybrid mismatch scheme was entered into or carried out in Australia or outside Australia or partly in Australia and partly outside of Australia.

TJN-Aus supports that the operation of the hybrid financial instrument mismatch rule extends to apply if an amount of income or profits was subject to foreign income tax in circumstances where the rate of tax was lower than the ordinary rate of tax that applies to interest income in that jurisdictions. This is necessary to combat governments of secrecy jurisdictions cutting special deals with multinational enterprises (MNEs) to cheat other governments out of tax revenue they should be entitled to on the basis of where the MNEs are actually doing business. The Australian Government is right to be wary that there will be governments of secrecy jurisdictions that may seek to enter into arrangements with MNEs to deliberately facilitate hybrid mismatches.

TJN-Aus supports that a structured arrangement be assessed on the basis of if it is reasonable to conclude the hybrid mismatch is a design feature of the scheme which the payment was made, rather than the much higher bar test to try and prove the tax payer intended the hybrid mismatch. As noted in the Explanatory Memorandum (p. 36), this is consistent with the approach of Recommendation 10 of the OECD Action 2 Report.

TJN-Aus supports the inclusion of the integrity rule to address attempts by MNEs to circumvent the hybrid mismatch laws by interposing a conduit entity that pays effectively no tax to invest into Australia, as an alternative to investing directly into Australia via traditional hybrid instruments or entities.

TJN-Aus supports the amendments to limit the scope of the exemption for foreign branch income and to prevent a deduction from arising for payments made by an Australian branch of a foreign bank to its head office in some circumstances. TJN-Aus supports that an Australian branch of a foreign bank should not be permitted to deduct notional payments of interest made to the foreign bank or an amount paid in respect of a notional derivative transaction for an income year unless the payment gives rise to dual inclusion income in that income year.

TJN-Aus also supports the provisions to:

- deny imputation benefits on franked distributions made by an Australian corporate tax entity if all or part of the distribution gives rise to a foreign income tax deduction; and
- prevent a foreign equity distribution from a foreign company that is received, directly or indirectly, by an Australian corporate tax entity that holds a participation interest of at least 10 per cent in the foreign company from being non-assessable non-exempt income if all or part of the distribution gives rise to a foreign income tax deduction.

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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
- 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