



Manager
Corporate and International Tax Division
Revenue Group
Treasury
Langton Cres
Parkes ACT 2600
E-mail: william.potts@treasury.gov.au

Tax Justice Network Australia Submission on Tax Integrity – Clarifying the Operation of the Hybrid Mismatch Rules

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The Tax Justice Network Australia (TJN-Aus) welcomes this opportunity to make a submission on the Treasury inquiry into clarifying the operation of the hybrid mismatch rules. The TJN-Aus has welcomed the Australian Government action to address the problem of hybrid mismatches and their misuse by some corporations and legal entities to avoid paying taxes in the places where the business is being conducted. The TJN-Aus supports the *Treasury Laws Amendment Bill 2019: hybrid mismatch rules* being brought to the Parliament for passage into law.

The TJN-Aus notes that the OECD has estimated the global revenue loss to governments from base erosion and profit shifting (BEPS) to be in the order of US\$240 billion a year, or up to 10% of global corporate income tax revenues.¹ Thus the Australian Government must make an active contribution to multilateral efforts to address BEPS and ensure governments have the revenue to provide for services to their communities such as health clinics, schools, mental health services, aged care and law enforcement.

As noted in our 2018 submission, there will be on-going risks that there will be attempts to defeat the hybrid mismatch rules by the design of much more elaborate hybrid mismatches 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 TJN-Aus supports that the *Treasury Laws Amendment Bill 2019: hybrid mismatch rules* exposure draft:

- Will treat a multiple entry consolidated group in the same way as a member of a consolidated group to work out whether a reverse hybrid mismatch arises;
- For the purposes of applying the hybrid mismatch rules, trusts and partnerships will be recognised as entities that:
 - make and receive payments;
 - hold, acquire or dispose of assets; and
 - can enter into schemes.
- That a trust that is a public trading trust will effectively be treated as if it were a company for the purposes of the hybrid mismatch rules;

¹ <http://www.oecd.org/tax/beps/>

- Strengthen the hybrid mismatch integrity rule to ensure that it can apply to financial arrangements that have been designated to circumvent the operation of the hybrid mismatch rule.

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

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