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**Submission from the Tax Justice Network Australia on the
Economic infrastructure staples tax concession Draft Guidance
Note
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The Tax Justice Network Australia (TJN-Aus) welcomes this opportunity to make a submission on the *Economic infrastructure staples tax concession Draft Guidance Note*. The TJN-Aus notes that the guidance note follows the changes to section 12-439 of Schedule 1 of the *Taxation Administration Act 1953* introduced by the *Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax and Other Measures) Act 2019*.

The TJN-Aus would question the need to maintain cross stapled structures, as it is not clear that there is a strong case to their benefit to the general Australian community. The TJN-Aus continues to believe there is a need for concrete evidence of the benefits derived from allowing for cross staple structures, against the likely government revenue loss they create. It is not enough to assert that such tax concessions attract foreign investment. It should be possible to back up such a claim with evidence that can be interrogated.

The TJN-Aus welcomes that an economic infrastructure facility is limited to transport, energy, communication and water infrastructure, noting that mining operations will not typically be considered economic infrastructure facilities.

The TJN-Aus welcome that only an Australian government agency will be able to apply to the Treasurer in respect to a facility or an improvement to the facility being eligible for the economic infrastructure staples tax concession.

The TJN-Aus welcomes that there will be a public announcement if an application for the tax concession is successful. However, the TJN-Aus is disappointed that there will not be automatic disclosure of the cost to government revenue. The TJN-Aus believes that the impact of the tax concession on government revenue should be revealed except in exception circumstances.

The TJN-Aus welcomes that the Infrastructure Australia assessment of the business case of applications will be required to be published.

The TJN-Aus welcomes that the tax concession will be limited only to projects with estimated capital expenditure of \$500 million or more and will only apply to projects where construction is yet to commence.

The TJN-Aus particularly welcomes that in determining whether the concession for the facility or the improvement is in the national interest, the Treasurer must have regard to whether the entities to the cross staple arrangement and any known ultimate investors in those entities are compliant with Australian laws. The TJN-Aus asks that the Treasurer also takes into account whether the entities in the cross staple arrangement and any known ultimate investors in those entities are compliant with the tax laws of other jurisdictions. Failure to comply with the tax laws of other governments is likely to be a red flag that the entities may have a high-risk appetite for complying with Australian tax law as well.

The TJN-Aus welcomes that in determining whether the concession for the facility or the improvement is in the national interest, the Treasurer must have regard to the impact of the facility (or improvement) on the relevant community (this might include social impacts, issues of social exclusion and/or quality of life, such as access to services, employment and safety).

The TJN-Aus welcomes that an application must include disclosure of the ultimate beneficial owners of the entities involved and the likely countries where the beneficiaries are (or will be) tax residents.

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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
- 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