



The Treasury
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Submission on improving the integrity of the thin capitalisation rules

17 August 2018

The Tax Justice Network Australia (TJN-Aus) welcomes this opportunity to make submission on the *Treasury Laws Amendment (Making sure multinationals pay their fair share of tax in Australia and other measures) Bill 2018*. The TJN-Aus supports the exposure draft of the Bill and urges the government to introduce the Bill to the Parliament as soon as practically possible.

The TJN-Aus supports the objectives of the Bill to tighten Australia's thin capitalisation rules by:

- Requiring an entity to use the value of the assets and liabilities that are used in its financial statements;
- Removing the ability for an entity to revalue its assets specifically for thin capitalisation purposes; and
- Ensuring that non-authorised deposit-taking institutions foreign controlled Australian tax consolidated groups and multiple entry consolidated groups that have foreign investments or operations are treated as both outward investing and inward investing entities.

The TJN-Aus notes that artificially loading up debt is a key technique that multinational corporations use to shift profits out of the jurisdictions where they are doing business to low tax jurisdictions to avoid paying the tax they should be paying in the place they are actually doing business. Allowing interest repayments in intra-party loans to be claimed as a tax deduction facilitates this tax avoidance technique.

The TJN-Aus is concerned that the thin capitalisation safe harbour has been misused by corporations as giving them an acceptable limit of tax avoidance they are allowed to engage in through artificial debt loading through intra-party loans. In other words, the corporation makes a loan it does not need, as the financing in question could be provided through equity, from a low tax jurisdiction for the primary or sole purpose of avoiding paying tax in Australia through being able to claim interest repayments to itself as a tax deduction. In such circumstances the law should enable the ATO to actively investigate such intra-party loans and deny the deduction where a purpose of the intra-party loan is tax avoidance, even when the loan is below the thin capitalisation safe harbour. If this is not already possible under the general anti-avoidance rule, Part IVA of the *Income Tax Assessment Act*, then amendments should be made for this to happen.

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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