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Submission from the Tax Justice Network Australia to consultation on the Response to PwC – reform of promoter penalty laws 4 October 2023

The Tax Justice Network Australia (TJN-Aus) welcomes the *Treasury Laws Amendment (Measure for Consultation) Bill 2023: PwC Response – promoter penalty laws* and supports it being introduced to the Parliament. We believe it is important that the ATO has sufficient powers to effectively deter the promotion of tax evasion and avoidance schemes.

The penalties for promoting tax evasion and tax avoidance schemes need to be large enough to ensure that a promoter cannot calculate on profiting from having sold tax avoidance and tax evasion schemes when caught. For example, Gregg Ritchie, one of KPMG's senior tax partners in the US, broke the law when he advised his firm not to register a tax shelter with the Internal Revenue Service. In a memo to colleagues, he stated, "Firstly, the financial exposure of the firm is minimal. Based on our analysis of the applicable penalty sections, we conclude that the penalties would be no greater than \$14,000 per \$100,000 in KPMG fees." He also argued it was simply the industry norm "There are no tax products marketed to individuals by our competitors which are registered."¹ He concluded:

Any financial exposure that may be applicable can easily be dealt with by setting up a reserve against fees collected. Given the relatively nominal amount of such potential penalties, the Firm's financial results should not be affected by this decision.... The rewards of successful marketing of [the tax structure] product (and the competitive disadvantages which may result from registration) far exceed the financial exposure to penalties that may arise.²

Such a calculation must be deterred by Australian law.

We would urge that the Bill be amended so that the Commissioner can apply to the Federal Court of Australia for an order that an entity has contravened the promoter penalty laws within ten years from the time the conduct that is alleged to have contravened the laws is last engaged in. Such a time frame would increase the deterrent impact of the law.

We strongly support that a scheme is considered a tax exploitation scheme, whether implemented or not.

¹ Soltes, Eugene. (2016). 'Why they do it', Public Affairs, USA, 90.

² Ibid., 90.

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Background on the Tax Justice Network Australia

The Tax Justice Network (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 believes our tax and financial systems are our most powerful tools for creating a just society that gives equal weight to the needs of everyone. But under pressure from corporate giants and the super-rich, our governments have programmed these systems to prioritise the wealthiest over everybody else, wiring financial secrecy and tax havens into the core of our global economy. This fuels inequality, fosters corruption and undermines democracy. We work to repair these injustices by inspiring and equipping people and governments to reprogram their tax and financial systems.

The Tax Justice Network Australia (TJN-Aus) is the Australian arm of TJN.

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 (AEU)
- Australian Manufacturing Workers Union (AMWU)
- Australian Nursing & Midwifery Federation (ANMF)
- Australian Services Union (ASU)
- Australian Workers Union, Victorian Branch (AWU)
- Baptist World Aid
- Caritas Australia
- Centre for International Corporate Tax Accountability & Research (CICTAR)
- Community and Public Service Union (CPSU)
- Electrical Trades Union, Victorian Branch (ETU)
- Evatt Foundation
- Friends of the Earth (FoE)
- GetUp!
- Greenpeace Australia Pacific
- International Transport Workers Federation (ITF)
- Jubilee Australia
- Maritime Union of Australia (MUA)
- National Tertiary Education Union (NTEU)
- New South Wales Nurses and Midwives' Association (NSWMWA)
- Oaktree Foundation
- Oxfam Australia
- Publish What You Pay Australia
- Save Our Schools
- SEARCH Foundation
- SJ around the Bay
- TEAR Australia
- The Australia Institute
- Union Aid Abroad – APHEDA
- United Workers' Union (UWU)
- Uniting Church in Australia, Synod of Victoria and Tasmania
- UnitingWorld
- Victorian Trades Hall Council
- World Vision Australia