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Submission of the Tax Justice Network Australia on the *Treasury Laws Amendment (Combating Multinational Tax Avoidance) Bill 2017: increasing penalties for significant global entities*

The Tax Justice Network Australia (TJN-Aus) welcomes the opportunity to provide a submission on the *Treasury Laws Amendment (Combating Multinational Tax Avoidance) Bill 2017*. The TJN-Aus supports the passage of the Bill.

Given the significant sums of money to be gained by large multinational enterprises (MNEs) that engage in tax avoidance, to deter such behaviour there is a need to ensure that the penalties are adequate to remove the profit from the crime, as well as the need to create a significant apprehension that the MNE and its key management personnel involved in the tax avoidance will be caught so the sanction will apply. Criminology literature finds that perceived certainty of punishment is associated with reduced intended offending.¹ Thus, the government needs to ensure that the additional penalties are backed up by a properly resourced Australian Taxation Office that is capable to making MNEs tempted to engage in tax avoidance believe that they will be caught and when caught the penalty will be significantly greater than the potential profit that could be gained through the tax avoidance.

As noted in the explanatory memorandum, the penalty for ‘failure to lodge on time’ has already been varied depending on the size of the business that fails to lodge on time, in recognition that the penalty must be proportionate to the size of the business if it is to act as any incentive to make the business lodge on time. The *Treasury Laws Amendment (Combating Multinational Tax Avoidance) Bill 2017* is simply extending the existing principle to make it applicable to ‘significant global entities’

The TJN-Aus agrees that the penalty for failing to lodge a return, notice, statement, Country-by-Country report or other approved form to the Commissioner on time be increased to at least a maximum of \$450,000 for significant global entities, which will only apply where the lodgement is more than 16 weeks late. Given the resources that significant global entities usually have at their disposal, they have less excuse not to lodge accurate documents to the Commissioner of Taxation on time than smaller businesses do (although in our view all businesses and individuals should lodge documents required by the Commissioner of Taxation on time, unless there are exception circumstances that have been discussed with the Commissioner).

¹ Daniel S Nagin, ‘Deterrence in the Twenty-First Century’, *Crime and Justice* Vol. 42, No. 1, (August 2013), 201.

The TJN-Aus supports the doubling of administrative penalties for significant global entities relating to statements and failing to give documents necessary to determine tax-related liabilities. However, the TJN-Aus questions if this increase in penalty is sufficient given the financial resources of the significant global entity and if a higher multiplier would not be more appropriate given the possible tax revenue at stake, such as increasing the penalties five-fold. A higher multiplier seems more appropriate, given the Commissioner has the ability to remit higher penalties based on the circumstances of the corporation in question.

The TJN-Aus supports that the Bill will allow the Commissioner of Taxation to apply an administrative penalty where a significant global entity fails to provide a general purpose financial statement in the approved form to the Commissioner of Taxation or ASIC.

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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 Trade Unions (ACTU)
- Australian Education Union
- Australian Services Union
- Baptist World Aid
- Caritas Australia
- Columban Mission Institute, Centre for Peace Ecology and Justice
- Community and Public Service Union
- Friends of the Earth
- GetUp!
- Global Poverty Project
- 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
- SEARCH Foundation
- SJ around the Bay
- Social Policy Connections
- SumOfUs
- Synod of Victoria and Tasmania, Uniting Church in Australia
- TEAR Australia
- Union Aid Abroad – APHEDA
- UnitedVoice
- UnitingWorld
- UnitingJustice
- Victorian Trades Hall Council
- World Vision Australia