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Submission on the *Tax and Superannuation Laws Amendment (Better Targeting the Income Tax Transparency Laws) Bill 2015*
3 July 2015

The Tax Justice Network Australia (TJN-Aus) makes this submission to oppose the *Tax and Superannuation Laws Amendment (Better Targeting the Income Tax Transparency Laws) Bill 2015*. TJN-Aus believes the Government should not proceed with the Bill.

The current *Tax Administration Act 1953* requires that the Australian Taxation Office (ATO) publish limited tax return information of companies with total income of \$100 million or more, specifically their reported total income, taxable income and income tax payable. Such transparency evens up the playing field between publicly listed domestic companies (whose financial reporting gives a clearer picture of the risks related to such companies) and private companies (whose lack of reporting may conceal the true risks associated with the entire company). Increased transparency also will boost confidence in the broader community that companies are being required to pay the taxes they should pay, and will require companies to have to explain their tax arrangements offering a significant deterrent to aggressive tax arrangements that might be legally contestable.

Where a private company is paying little or no tax, it is not unreasonable to expect the company to explain why that is the case. There are plenty of companies that should explain their tax paying. Documents obtained under freedom of information revealed that 2,168 businesses identified by the ATO had a total annual income of more than \$100 million. Of these, the number of Australian-headquartered businesses that did not pay tax had increased to 29% in 2009. In 2012 this position had improved slightly with 26% Australian head-quartered companies with over \$100 million in income paying no tax.

A document obtained from the Australian Taxation Office (ATO) under freedom of information has revealed that the private companies linked to Australian high wealth individuals have average profit margins lower than the other categories of companies (foreign owned and Australian publicly listed) in the group that the legislation applies to.¹ Almost two-thirds have some form of international related party dealings.² They account for most of all international related party dealings reported to the ATO, despite being only 21% of the businesses caught under the tax transparency measures of the *Tax Administration Act*.³ It is possible that the lower average profit is simply due to this category of companies performing worse on average than other categories of businesses. However, there is the possibility that the lower average reported profitability is due to aggressive tax practices. Thus, TJN-Aus believes that privately owned Australian resident companies should not be exempted from the existing tax transparency measures in the *Tax Administration Act*.

Thus, TJN-Aus believes that the benefits of the current tax transparency provisions in the *Tax Administration Act*, which cover all companies with revenue over \$100 million, have a

¹ Australian Taxation Office, 'Corporate Transparency overview', September 2013, p. 12.

² Australian Taxation Office, 'Corporate Transparency overview', September 2013, p. 12.

³ Australian Taxation Office, 'Corporate Transparency overview', September 2013, p. 12.

public interest benefit that outweighs the normal secrecy afforded to companies under Australian tax law.

Kidnapping and Personal Security Claims

We regard as bizarre public claims that disclosure of income of corporate entities with total incomes of \$100 million or more will open up certain individuals to greater risk of kidnap for ransom.

We wrote to the Minister for Finance and Acting Assistant Treasurer in December 2014 asking what advice the Australian Federal Police had provided on the likely increased risk of kidnapping for wealthy individuals based on the limited disclosures required under the *Tax Administration Act*. No reply has been received on that request.

TJN-Aus notes that it has been reported in the press that the Transport Workers' Union made Freedom of Information applications to the AFP, the Attorney-General's department and the Australian Tax Office, that all came back saying no documents exist in relation to advice about the safety of individuals if the new regulations went ahead.⁴

By the argument being made, all existing public financial disclosure by corporate entities has increased the personal security risks of certain individuals in those corporations. There is no evidence for such an assertion.

Transparency assists the functioning of markets

Arguments of commercial disadvantage also seem to be grossly exaggerated. By the arguments being made domestic publicly listed companies must be at an enormous disadvantage with regards to their competitors, customers and suppliers who are privately listed companies, given the much greater level of financial information most are required to publicly disclose compared to the very limited information that would be required to be published by the ATO under the *Tax Administration Act*. TJN-Aus is unaware of any studies showing the enormous commercial disadvantage suffered by domestic publicly listed companies that need to provide public accounts of their financial affairs compared to private companies that are able to keep their financial affairs publicly secret.

Further, it is the understanding of TJN-Aus that when a private company is a supplier to a large company they are normally required by the customer company to disclose their financial details. The customer company will often want the certainty they are not entering into a contract with a company that is financially unstable.

Finally on this point, TJN-Aus' understanding is that the normal argument would be that greater transparency leads to better functioning of markets. The most efficient and innovative companies are rewarded, with transparency exposing inefficiencies and risks. The *Tax and Superannuation Laws Amendment (Better Targeting the Income Tax Transparency Laws) Bill 2015* seems to be built on the assertion that markets work better in environments of secrecy, where one company may be able to conceal information from other players in the market place to gain an advantage they would not be able to obtain in an open market. However, no research is provided to support such an assertion. While, TJN-Aus appreciates that secrecy can be of benefit to a company provided with that secrecy, secrecy does not provide for more efficient markets at the macro level.

Tax Transparency in other Jurisdictions

The Explanatory Materials to the *Tax and Superannuation Laws Amendment (Better Targeting the Income Tax Transparency Laws) Bill 2015* correctly notes that there are other

⁴ <http://www.smh.com.au/federal-politics/political-news/abbott-government-sought-no-security-advice-on-kidnap-fears-before-protecting-wealthy-from-tax-disclosure-20150608-ghiv74.html>

countries that do not provide secrecy to companies around their tax affairs, naming Denmark, Finland, Sweden and Norway. TJN-Aus is unaware that the transparency in the tax details of companies in these jurisdictions has had negative impacts on the functioning of markets in these jurisdictions or on the personal safety of particular wealthy individuals. In fact in Norway, there is research that found that greater public disclosure of tax affairs led to an increase in reported income by some companies.⁵

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⁵ <http://www.ssb.no/en/forskning/discussion-papers/taxes-on-the-internet>

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
- Australian Council for International Development (ACFID)
- Australian Council of Trade Unions (ACTU)
- Australian Education Union
- Anglican Overseas Aid
- Baptist World Aid
- Caritas Australia
- Columban Mission Institute, Centre for Peace Ecology and Justice
- Community and Public Service Union
- Friends of the Earth
- Global Poverty Project
- Greenpeace Australia Pacific
- Jubilee Australia
- National Tertiary Education Union
- New South Wales Nurses and Midwives'
- Oaktree Foundation
- Oxfam Australia
- Save the Children Australia
- SEARCH Foundation
- SJ around the Bay
- Social Policy Connections
- 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