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Submission on Improving the Integrity of Stapled Structures

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The Tax Justice Network Australia (TJN-Aus) welcomes this opportunity to make submission on improving the integrity of stapled securities through the *Treasury Laws Amendment (Stapled Structures and Other Measures) Bill 2018*. The TJN-Aus urges the Australian Government to proceed with bringing the *Treasury Laws Amendment (Stapled Structures and Other Measures) Bill 2018* to the Parliament as soon as possible.

As noted in the Treasury consultation paper in March 2017, as of December 2016 listed securities accounted for approximately \$199 billion of the Australian stock exchange market capitalisation, which was approximately 10% of total market capitalisation at the time, up from \$149 billion two years earlier.

The TJN-Aus notes that greater restrictions on stapled structures were outlined for other jurisdictions in the Treasury consultation paper of March 2017. It would be helpful for Treasury to release the details of its consideration of these alternative measures. For example, on the face of it the TJN-Aus would support the UK approach to treat stapled entities as a single entity for the purposes of thin capitalisation provisions.

The TJN-Aus shares the concerns expressed in the Treasury analysis that increasingly a broad range of businesses are seeking to access the managed investment trust (MIT) tax concession by using stapled structures and other similar arrangements to convert active income into passive income. As noted in the exposure draft, stapled securities have resulted in the unintended emergence of a dual corporate tax system that taxes foreign institutional investors in land-rich industries at rates anywhere between zero and 15%.

TJN-Aus supports:

- Increasing the MIT withholding rate on income attributable to trading business to a rate equal to the top corporate tax rate of 30% rather than the current 15%;
- Amending the thin capitalisation rules to prevent foreign investors from using multiple layers of flow-through entities (such as trusts and partnerships) to 'double gear' their investments to generate more favourably taxed interest income;
- Limiting the foreign pension fund withholding tax exemption for interest and dividends to portfolio investments only; and
- The amendments to limit the tax concession for foreign governments (including sovereign wealth funds), so that interest and dividend income derived by foreign government investors from non-portfolio investments will be taxed.

The TJN-Aus is concerned at the up to 15 year length allowed for transitional arrangements, which allows corporations that set up artificial arrangements between asset entities and operating entities to obtain the lower MIT concessional tax rate a long period to benefit from those arrangements. Treasury should release the supporting assessment as to why such a long transition period is warranted. As noted in the Treasury consultation paper on stapled securities from March 2017, the enactment of the Canadian specified investment flow

through legislation was accompanied by a more reasonable five year grace period and rollover relief, to allow stapled structures to restructure their affairs.

The TJN-Aus supports that for the purposes of determining associated entity debt, associate entity equity and the associate entity excess amount under the thin capitalisation provisions, a trust or partnership will be an associate entity of another entity if that other entity holds an associate interest of 10% or more in that trust or partnership. A 10% holding is likely to make it harder to structure to achieve a 'double gear' investment for a more favourable tax outcome.

The TJN-Aus also supports that in determining the arm's length debt amount, an entity must consider the debt to equity ratios in entities that are relevant to the considerations of an independent lender or borrower.

The TJN-Aus supports the amendments for a superannuation fund for foreign residents to be liable to pay withholding tax on payments of interest, dividends or non-share dividends from an entity if the foreign superannuation fund has a portfolio-like interest in the entity making the payment.

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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
- AidWatch
- 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