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## **Submission on Implementing the OECD Hybrid Mismatch Rules December 2017**

The Tax Justice Network Australia (TJN-Aus) welcomes this opportunity to make submission on implementing the OECD Hybrid Mismatch Rules. The TJN-Aus welcomes Australian Government action to address the problem of hybrid mismatches and their misuse by some corporations to avoid paying taxes in the places where business is really being conducted.

TJN-Aus notes that the OECD has estimated the global revenue loss to governments from base erosion and profit shifting (BEPS) to be conservatively between US\$100 billion and US\$240 billion a year, or between 4% and 10% of global corporate income tax revenues. Hybrid mismatches are one of the tax avoidance techniques contributing to this problem.

The TJN-Aus believes the hybrid mismatch rules need to be designed as broadly as possible to minimise the challenge the ATO will face in having to keep up with the 'creativity' that characterizes the tax planning industry. There is a risk that there will be attempts to defeat the hybrid mismatch rules by the design of much more elaborate hybrid mismatches in order to circumvent the rules. The hybrid mismatch rules will require constant monitoring to ensure proper application. Resolving the arbitrage questions raised by hybrid payments, entities, and transfers is easier said than done. The complexity comes from attempts to narrow the range of transactions covered.

The hybrid mismatch rules must apply to any mismatch that results in a deduction/non-inclusion mismatch and a deduction/deduction mismatch without the Commissioner of Taxation having to prove that the business or individual in question intended to construct the mismatch. The rules should simply apply if the hybrid mismatch exists, with no need to consider if the hybrid mismatch was intentional.

The TJN-Aus agrees that for the hybrid mismatch rules to apply that the entities involved do not need to know the precise treatment of the payment in the counterparty's taxable income calculation.

The TJN-Aus agrees that the hybrid mismatch rules should apply to any payment or loss made anywhere, whether that be in Australia, partly in Australia or outside of Australia. We also agree that it should extend to financial payments and non-cash benefits.

The TJN-Aus agrees that any law of a foreign government that, for the purpose of a foreign tax, treats those incomes or profits of another entity be disregarded. We agree that if a hybrid mismatch arrangement involves a member business of a consolidated group, a mismatch will be neutralised by:

- disallowing a deduction for the head company of the group; or
- including an amount in the head company's assessable income.

The TJN-Aus supports Schedule 2 of the Exposure Draft Bill that will:

- deny imputation benefits on franked distributions made by an Australian corporate tax entity if the entity was entitled to a foreign income tax deduction in respect of all or part of the distribution: and
- prevent a foreign equity distribution from a foreign company that is received, directly or indirectly, by an Australian corporate tax entity that holds a participation interest of at least 10% in the foreign company from being non-assessable non-exempt income if the foreign company that made the foreign equity distribution was entitled to a foreign income tax deduction in respect of the distribution.

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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