



Centre for
International
Corporate Tax
Accountability
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Centre for International Corporate Tax Accountability & Research and Tax Justice Network - Australia Joint Submission on denying deductions for payments relating to intangible assets connected with low corporate tax jurisdictions

26 April 2023

The Tax Justice Network Australia (TJN-Aus) and the Centre for International Corporate Tax Accountability and Research (CICTAR) welcome this opportunity to make a joint submission to the consultation on denying deductions for payments relating to intangible assets connected with low corporate tax jurisdictions.

Ensuring multinationals pay a fair share of corporate income tax is necessary for the broader integrity of the tax system and to level the playing field for all businesses, particularly small and medium-sized enterprises. In addition to direct efforts to close loopholes for multinational tax avoidance and raise revenues for public services, we note that transparency efforts can increase corporate income tax revenue by shifting corporate behaviour and public attitudes towards fairer taxation. Since the COVID-19 global pandemic, there has been a growing awareness of the essential need for well-funded public health systems and an understanding that additional revenues will be needed to pay for the increased government support provided to the community through the pandemic. There is also growing awareness that increased public investments are required for aged care, early childhood education, disability services and income support and that these investments will create a better society and stronger economic future for all. Increasing income tax revenues from multinational corporations is essential to the solution and increasing fairness and broad-based economic growth.

TJN-Aus and CICTAR welcome this and other proposed multinational tax reforms from the Commonwealth Government but continue to strive for broader reforms to national and international tax systems, including towards a unitary tax system and away from the arm's length principle.

We are supportive of the measures in the Exposure Draft, *Treasury Laws Amendment (Measures for Consultation) Bill 2013*: Deductions for payments relating to intangible assets connected with low corporate tax jurisdictions. We particularly agree with the definition of a low corporate tax jurisdiction being set as a jurisdiction where the rate of corporate income tax of that jurisdiction is less than 15% or nil. The 15% rate aligns with the OECD Pillar Two global minimum corporate tax rate. In Section 960-258(1) we question if the term “foreign jurisdiction” might be better than “foreign country”, in case there are subregions, provinces or states of a foreign country that are able to offer corporate income tax rates that undercut the corporate income tax rate for the country.

We strongly support that the amendments apply where a payment or credit is made, or a liability is incurred under an arrangement or a related arrangement that results in the Significant Global Entity (SGE) or another entity acquiring an intangible asset or a right to exploit an intangible asset, or results in that entity exploiting the intangible asset, as a means to close possible loopholes that might otherwise be used to avoid the aim of the amendment.

Likewise we support the drafting that defines exploiting an intangible asset as including using, marketing, selling, licensing and distributing the intangible asset, again to avoid loopholes that could be exploited to circumvent the provision.

The submitting bodies support that the amendments will capture situations where the payment and the acquisition of the right to exploit or exploitation of an intangible asset is not provided for in the same contract.

We welcome the drafting to capture situations where the SGE or another entity doesn't acquire any express right to exploit an intangible asset under the arrangement providing for payment, but as a result of a common understanding between associates has access to intangible assets.

TJN-Aus and CICTAR welcome the measures to address mischaracterising payments that are, at least to some extent, effectively made to acquire a right to have permission to exploit an intangible asset as payments made for other things such as services or tangible goods. We support the inclusion of a shortfall penalty provision to penalise SGEs who mischaracterise such payments in an attempt to avoid income tax, including withholding tax. For such a penalty to be effective, it must not need to rely on proof that the SGE explicitly and deliberately sought to mischaracterise the payments. To do so would set the bar so high the penalty would probably become unusable. Rather, there needs to be the ability to issue the penalty where the mischaracterising of the payments has occurred and the SGE cannot demonstrate that it took reasonable steps to try and prevent the mischaracterisation of the payment.

We welcome the clear and broad definition of “intangible assets” in the Exposure Draft. We also support the regulation-making power to provide for the ability to prescribe new assets to which the section applies to allow for capturing new forms of intangible assets being developed.

TJN-Aus and CICTAR welcome that the amendments will apply to deny deductions for payments to associates where income from exploiting the intangible asset is derived in a jurisdiction determined by the Minister as providing for a preferential patent box regime without sufficient economic substance in that jurisdiction.

The submitting bodies believe the measures contained in the Exposure Draft should apply to more than just SGEs, as the threshold for an SGE is very high at \$1 billion in revenue. We believe that it should apply to all large businesses as defined by the ATO, with combined

turnover of greater than \$250 million.¹ Abuse of payments relating to intangibles and royalties to low or no tax jurisdictions is not limited to SGEs.

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¹ Australian Taxation Office, 'Large business', <https://www.ato.gov.au/business/large-business/#:~:text=We%20define%20large%20businesses%20as,partnerships%2C%20trusts%20and%20super%20funds>.

Background on the Centre for International Corporate Tax Accountability & Research (CICTAR)

CICTAR is a global corporate tax research centre that produces information and analysis to untangle the corporate tax web. The Centre is a collective resource for workers and the wider public to understand how multinational tax policy and practice affects their daily lives. CICTAR's work supports public participation in the tax debate so that everybody can take part in decision-making that affects their communities.

For more information, visit the CICTAR website here: <https://cictar.org/>

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 cooperation 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 (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
- 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
- United Workers' Union (UWU)
- Uniting Church in Australia, Synod of Victoria and Tasmania
- UnitingWorld
- Victorian Trades Hall Council
- World Vision Australia