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## **Submission on Ensuring the Effectiveness of the Income Tax General Anti-Avoidance Rule**

**19 December 2012**

The Tax Justice Network Australia (TJN-Aus) welcomes this opportunity to make a submission on the exposure draft of amendments to the general anti-avoidance rule in Part IVA of the *Income Tax Assessment Act 1936*.

The TJN-Aus supports an effective general anti-avoidance rule to counter tax avoidance through arrangements, that when assessed objectively, are carried out with that sole or dominant purpose of securing a tax reduction.

The TJN-Aus supports the inquiry in Part IV A being a single, holistic inquiry about whether a person or company participated in a scheme for the sole or dominant purpose of enabling the taxpayer to obtain a particular tax benefit.

The TJN-Aus agrees that the legislation should not result in alternative postulates suggested by the Commissioner being rejected by the courts on the grounds the alternative postulates would have caused the parties to either abandon or indefinitely defer the schemes and the wider transactions of which they were a part. Section 177C should not act as a shield to allow a taxpayer to enter into an arrangement where the sole or dominant purpose is to secure a tax reduction.

To that end, the TJN-Aus agrees that a tax advantage cannot be meaningfully linked to a scheme by comparing the tax consequences of the scheme to the tax consequences that would have flowed if the parties had chosen to pursue some other objective. To provide meaningful comparison, the tax consequences of the scheme should be compared with the tax consequences of an alternative reasonably capable of achieving for the taxpayer the same non-tax effects as the scheme.

The TJN-Aus supports the amendments confirming that Part IV A is intended to be able to apply to schemes that are steps within or towards other schemes.

The TJN-Aus supports the Australian Government assisting developing countries in developing effective general anti-avoidance rules, but this only makes sense if the general anti-avoidance rule in Australia is effective.

### **Background on the Tax Justice Network Australia**

The Tax Justice Network Australia (TJN-Aus) is the Australian branch of the Tax Justice Network (TJN). 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
- ACTU
- Australian Education Union
- Anglican Overseas Aid
- Baptist World Aid
- Caritas Australia
- Columban Mission Institute, Centre for Peace Ecology and Justice
- Global Poverty Project
- Jubilee Australia
- National Tertiary Education Union
- Oaktree Foundation
- Social Justice Around the Bay
- Social Policy Connections
- Synod of Victoria and Tasmania, Uniting Church in Australia
- TEAR Australia
- Union Aid Abroad – APHEDA
- UnitingWorld

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