



Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
E-mail: economics.sen@aph.gov.au

**Submission to the Senate Standing Committee on Economics on
the *Tax and Superannuation Laws Amendment (Better Targeting
the Income Tax Transparency Laws) Bill 2015*
17 September 2015**

The Tax Justice Network Australia (TJN-Aus) welcomes this opportunity to make this submission to oppose the *Tax and Superannuation Laws Amendment (Better Targeting the Income Tax Transparency Laws) Bill 2015*. TJN-Aus believes the Parliament should not proceed with the Bill and it should be withdrawn.

The current section 3C of the *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.

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.

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

The TJN-Aus is concerned by the extraordinary secrecy already granted to many large Australian privately owned companies. Rules introduced by the Keating government in 1995 exempted some large companies from filing annual reports with the corporate regulator. Three Baiada companies are among almost 1500, including the Pratt family's Visy empire, Lindsay Fox's Linfox, and Kerry Stokes' Australian Capital Equity, that are "grandfathered" an exemption from disclosure laws.⁴

The TJN-Aus notes with concern the apparently false statement made by 50% foreign owned Teys Australia (a Cargill joint venture) in their 15 June 2015 submission to Treasury on the Bill, that the current tax transparency provisions of the *Tax Administration Act* would be:⁵

Providing commercially sensitive information not otherwise available, to other participants in the supply chain, having the effect of disadvantaging Teys in negotiations, and customer/supplier relationships.

Allowing competitors access to commercially sensitive information from which they stand to gain commercially at the expense of Teys.

Attached to this submission is the financial statements and reports of Teys Australia Pty Ltd for the financial year ending 30 June 2014, purchased for \$38 from the Australian Securities & Investment Commission. The attached financial report contains vastly more financial information than will be exposed by the provisions of the *Tax Administration Act*. Note 4 (pages 24-25) of the financial report provides much greater detail of the tax affairs of Teys Australia than will be disclosed by the provisions of the *Tax Administration Act*. Surely any other party in the supply chain or competitor could, if so inclined, afford to spend \$38 to gain the full financial report.

The Committee should ask Teys Australia to justify the statements made in their submission to Treasury that the information that would be disclosed by the *Tax Administration Act* would not be available elsewhere to other parties in the supply chain or competitors.

In addition to material that can be obtained through ASIC, private sources such as IBIS World will sell information about large private Australia companies. IBIS states they can provide company profile reports for the top 2,000 earning companies in Australia.⁶ "Reports include a written description of the company, its history, brands and products, contact details and key personnel, operating and legal structure, financial data, industries of involvement and business service providers."⁷

The advantage of the current transparency provisions of the *Tax Administration Act* are that it will level the playing field by providing the same information on all businesses with

⁴ Ben Butler, 'Bartter escapes tax net on \$1.5bn', *The Australian*, 16 December 2014.

⁵ Teys Australia, Submission to Treasury, Income Tax Transparency Laws – Exposure Draft', 15 June 2015, p. 2.

⁶ <http://www.ibisworld.com.au>

⁷ <http://www.ibisworld.com.au>

revenues greater than \$100 million and will not require that every financial report needs to be pulled to be able to establish a comparative picture.

The Benefits of Increased Tax Transparency

Research has shown that increased transparency increases the pressure on companies to comply fully with their tax obligations. Increasingly, a sense of social responsibility is seen as important to business and creates an expectation that company decision makers should also act in a broader social context in making business decisions including their tax paying practices.⁸

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.⁹

Teys Australia asserted in their submission to Treasury on 15 June 2015 that the current tax transparency provisions of the *Tax Administration Act* would result in:

Being the subject of serious criminal activity, as a result of disclosed personal information being used to target individuals on the basis of perceived wealth.

The Act does not disclose any personal information. By comparison, for a cost of \$19 a copy of the 'Current and Historical Company Extract' can be obtained from ASIC outlining the names and addresses of all the company Directors of Teys Australia Pty Ltd (the Extract is attached to this submission).

Even without purchasing documents from ASIC, the Teys family reveal their obvious wealth on social media (<https://www.facebook.com/TeysAustralia?fref=photo>). A further simple Google search allows a person to quickly gain a picture of the family's wealth. It is easy to locate the address of the property owned by Allan Walter and Carol Constance Teys in Kangaroo Point in Brisbane, which was purchased in 2004 for \$1.66 million. Photographs of the property are available online. Allan and Carol also own a unit in Labrador, Queensland, which they bought in 2002 for \$620,000 and they sold their property in Burbank, Queensland, in 2009 for \$1.275 million. We have excluded full address details for the purposes of this submission, but point out how easily such information can be obtained. Information about Geoff Teys, Brad Teys, Allan Teys and Tom Maguire (General Manager, Corporate Services) can be obtained on www.zoominfo.com. An online article from the *Courier Mail* dated 2013, stated "Teys Family, Logan City, Meat Processing" were worth \$282 million.¹⁰ The 2013 BRW rich list has an entry for Allan and Gary Teys and family with

⁸ Catriona Lavermicocca, 'Role of reputation risk in tax decision making by large companies', paper presented at the 11th International Conference on Tax Administration, Australian School of Business, 2014, p. 7.

⁹ <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>

¹⁰ <http://www.couriermail.com.au/business/rich-list/teys-family/story-fnja2ier-1226699524997>

a peak net worth of \$127 million.¹¹ The ease with which such information about the families wealth and address details can be obtained, some of it made available online by members of the family themselves, makes it obvious there will be no threat to the personal safety of people like the Teys family through the small amount of tax transparency being provided by the current provisions of the *Tax Administration Act*. The information that will be disclosed by the Act is irrelevant when compared to the publicly available information about the family's wealth. The fact that Teys family members themselves have disclosed information that would make it obvious they are wealthy suggests they understand the risks to their personal safety in Australia due to their wealth are very low indeed. This is great sign about how safe a country Australia is, but also that the current tax transparency measures of the Act are irrelevant to the personal security of wealthy Australians associated with large privately owned Australian companies.

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. Section 300A of the *Corporations Act 2001* and the ASX listing rules requires a publicly listed company to have to disclose specific information relating to the remuneration of key management personnel in the company. There has been no evidence that TJN-Aus is aware of that such reporting has resulted in increased kidnapping risks or increased personnel safety risks for those to whom the disclosure relates.

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 countries that do not provide secrecy to companies around their tax affairs, naming

¹¹ http://www.brw.com.au/p/lists/rich-200/2013/rich_hall_of_fame_OD3zipAkqSr1cRIHjPz3NO

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.¹²

Concerns about the tax paying behaviour of Australian privately owned companies

The TJN-Aus is concerned about the tax paying behaviour of some large Australian private companies. For example, *The Australian* reported that accounts for the privately owned food giant Bartter, which owns the famous Steggles brand for the year to 28 June 2014 showed that Bartter had revenue of \$1.48 billion and declared a profit before tax of \$9.74 million. During the year, it also paid dividends of \$29.4 million to its shareholders, companies ultimately owned by members of the Baiada and Camilleri families. However, income tax payable by the company is recorded in the accounts as zero. This is because pre-tax income is balanced out by deductions, mostly due to benefits claimed for the difference in the way stock and lease values are worked out for tax purposes. In the previous year, Bartter declared a profit before tax of \$38.9 million on \$1.35 billion in revenue, and paid \$9.36 million in tax.¹³

Further the Fair Work Ombudsman (FWO) associated Baiada with concerns about possible tax matters in their facilities, stating:¹⁴

The Inquiry found a large amount of work was performed 'off the books' as amounts paid to contractors within the supply chain did not correspond with the number of workers and amounts allegedly paid to those workers documented to perform the contracts.

Further:¹⁵

The Inquiry encountered a failure by the Baiada Group to provide any significant or meaningful documentation as to the nature and terms of its contracting arrangements with businesses involved in sourcing its labour.

The FWO stated:¹⁶

The Inquiry was unable (based on the limited material provided to it) to account for hundreds of thousands of dollars as money moved down the supply chain.

For example, in the case of labour contractor Mushland:¹⁷

Analysis of the limited records, which included invoices and pay records provided by Mushland, identified the entity was paid \$255,415.07 by the Baiada Group for the month of October 2013 (the Inquiry's sample period). The records also disclosed Mushland paid \$52,460.85 in wages to 18 employees during this period, leaving a margin of \$202,954.22.

¹² <http://www.ssb.no/en/forskning/discussion-papers/taxes-on-the-internet>

¹³ Ben Butler, 'Bartter escapes tax net on \$1.5bn', *The Australian*, 16 December 2014.

¹⁴ Fair Work Ombudsman, 'A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales', June 2015, p. 2.

¹⁵ Fair Work Ombudsman, 'A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales', June 2015, p. 2.

¹⁶ Fair Work Ombudsman, 'A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales', June 2015, p. 8.

¹⁷ Fair Work Ombudsman, 'A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales', June 2015, p. 18.

There are questions if the labour contractors supplying Baiada at the time were independent of Baiada. The reason for raising this question is that the FWO found the six principal contracting firms all had only verbal agreements with Baiada.¹⁸ Further:¹⁹

The various contactors who engaged with Fair Work Inspectors during the Inquiry held no concerns about receiving payment from the entity above it in the supply chain for the invoicing of work, notwithstanding a lack of written records.

This would seem to be very odd arrangements for labour contractors that were independent companies.

A number of workers who spoke to the FWO alleged they were paid in cash and no tax was taken out of their pay²⁰, which would indicate tax evasion if true. The FWO stated that the payment of wages in cash without keeping any records creates an opportunity to avoid the operation of income and payroll tax.²¹ The FWO referred the matter to the ATO and the NSW Office of State Revenue.²²

Restructuring of companies to get around Section 3C

One concern raised in the Explanatory Materials produced previously by Treasury (p.5, para. 1.17) was the possibility that the threat of disclosure “could lead to restructuring of the company’s affairs in order to keep below the threshold.” However, if this were to occur it would provide the ATO with a strong rationale to take a closer look at the tax practices of the companies involved. This is not a valid reason to exclude Australian companies from the disclosure requirements, but a strong reason why they should be included.

Dr Mark Zirnsak
Secretariat
Tax Justice Network Australia
c/- 130 Little Collins Street
Melbourne, Victoria, 3000

¹⁸ Fair Work Ombudsman, ‘A report on the Fair Work Ombudsman’s Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales’, June 2015, p. 10.

¹⁹ Fair Work Ombudsman, ‘A report on the Fair Work Ombudsman’s Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales’, June 2015, p. 10.

²⁰ Fair Work Ombudsman, ‘A report on the Fair Work Ombudsman’s Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales’, June 2015, p. 13.

²¹ Fair Work Ombudsman, ‘A report on the Fair Work Ombudsman’s Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales’, June 2015, p. 29.

²² Fair Work Ombudsman, ‘A report on the Fair Work Ombudsman’s Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales’, June 2015, p. 13.

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
- 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
- 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