

SUBMISSION NO. 2



Uniting Church in Australia
SYNOD OF VICTORIA AND TASMANIA

Justice and International Mission Unit
130 Little Collins Street
Melbourne Victoria 3000
Telephone: (03) 9251 5271
Facsimile: (03) 9251 5241
jim@victas.uca.org.au

February 2009

The Secretary
Joint Standing Committee on Treaties
PO Box 6021
Parliament House
Canberra, ACT, 2600

Dear Secretary,

The Justice and International Mission Unit of the Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes this opportunity to make submission on the *Agreement between the Government of Australia and the Government of Australia and the Government of the British Virgin Islands for the Exchange of Information Relating to Taxes (London, 27 October 2008)*. The Justice and International Mission Unit supports binding treaty action being taken with regard to this agreement to exchange taxation information.

The Uniting Church in Australia has committed itself to working to eradicate poverty globally in its Statement to the Nation at the inaugural National Assembly of Uniting Church delegates in 1977.

Fair taxation systems are an important element in eradicating poverty, ensuring that higher levels of tax are paid by those most able to afford and ensuring that governments have sufficient tax revenues to provide essential services to their people.

In 1997 the annual meeting of the delegates of the Uniting Church in Victoria passed a resolution committing the Synod to the position:

- (a) *To affirm the principle that the payment of taxes is a moral responsibility that goes with citizenship;*
- (b) *While acknowledging that taxation reform is a complex issue, to recommend to the Federal Government that the following guidelines need to undergird any reform of the Australian Taxation System:*
 - i. *That the taxation system be primarily progressive and just;*
 - ii. *That the taxation system encourage a responsible use of our resources and stewardship of the environment;*
 - iii. *That the taxation system be designed in such a way as to lessen the gap between the rich and the poor.*

In 2007 the annual Synod meeting of approximately 400 members of the Uniting Church in Victoria and Tasmania passed a resolution regarding the need to address corruption globally.

The entire resolution is attached. The resolution commended the Australian Government for its efforts to address corruption globally, specifically welcoming the Australian Taxation Office participating in the OECD's Forum on Harmful Tax Practices. It called on the Australian Government to support an international approach to eradicating tax evasion and sharing information on tax administration.

The Synod of Victoria and Tasmania is focussed primarily on the impact corruption has on developing countries and in countering efforts to reduce levels of poverty globally. We believe that the harmful tax practices of tax havens facilitate corruption.

In 2008 the annual Synod meeting resolved to become part of the global Tax Justice Network, to which we have been accepted as a member. The aims of the Tax Justice Network are 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

The Justice and International Mission Unit has also become a member of Transparency International Australia.

Tax havens undermine the operation of fair tax systems. The Tax Justice Network estimated in March 2005 that there was US\$11,500 billion held by individuals in approximately 73 tax havens around the world. The worldwide tax revenue lost as a result was estimated at US\$255 billion per year.¹ With so much tax revenue lost to international evasion and avoidance by large companies and wealthy individuals, governments are forced to reduce public spending and/or increase taxation on less mobile small companies or poorer individuals.²

The 1998 OECD report '*Harmful Tax Competition: an Emerging Global Issue*' notes that tax havens are a harmful form of tax competition as they 'poach' the tax base of other countries, and also encourage the race to the bottom by offering foreign capital a low or no-tax alternative.³

In the view of the Tax Justice Network "banking secrecy and trust services provided by global financial institutions operating offshore provide a secure cover for laundering the proceeds of political corruption, fraud, embezzlement, illicit arms trading and the global drug trade. The lack of transparency in international financial markets contributes to the spread of globalised crime, terrorism, bribery of under-paid officials by western businesses, and the plunder of

¹ <http://www.taxjustice.net>

² Richard Murphy, John Christensen and Jenny Kimmis, 'Tax us if you can', Tax Justice Network, September 2005, p. 1.

³ Oxfam UK, 'Tax Havens: Releasing the Hidden Billions for Poverty Eradication', 2000
<http://www.atac.org/fra/toil/doc/oxfam2.htm>

resources by business and political elites. Corruption clearly threatens development, and it is tax havens that facilitate the money laundering of the proceeds of corruption and all types of illicit commercial transactions.”⁴

Tax havens can create an illusion. A company might be registered in a tax haven territory, but almost no information about it needs to be recorded with the government of the tax haven. The names and addresses of directors and shareholders are almost never required to be on the public record and nominee names are allowed.⁵

Further, many companies operating in tax havens are owned by trusts and these trusts in turn are set up offshore. The trusts are often located in a different territory from that in which the company they own is registered. The trustees of the trust (who will, almost certainly also be nominees) will typically be located in a third tax haven territory. Within the tax planning industry it is generally thought that involving three tax haven territories in such a structure will make it very difficult for outside authorities to investigate what is really happening, and who is benefiting from it. This can achieve the outcome that the tax haven activity appears to take place nowhere, which means it is accountable to no government, pays no tax to anyone and has no duty to report anything because it can deny it is anywhere.⁶ In the words of the Tax Justice Network: “In the secretive, parallel universe of tax havens, structures can be set up to carry out real functions in the real world but without any requirement for a transparent legal presence that confirms their existence or the nature of their activities.

This creates the opportunity for all sorts of illicit activities by:

- allowing tax evasion to take place largely undetected;
- facilitating capital flight; and
- allowing other crimes such as money laundering, drug trafficking, people trafficking and so on to take place largely undetected.”⁷

The OECD issued a report in 1998 on *Harmful Tax Competition*, which defined the factors to be used in identifying these harmful tax practices, many of which are associated with tax havens. The OECD has sought to eliminate harmful practices largely by obtaining mutual undertakings to do so, and conditional upon agreement between all the participating jurisdictions by 2005.⁸ The Agreement being considered by JSCOT is consistent with the OECD approach in dealing with tax havens.

Some wealthy Australians are able to access offshore tax havens. This undermines equity within the taxation system, either reducing tax revenue or requiring the Government to tax others more heavily in order to generate the same revenue. The work of Operation Wickenby demonstrates that the tax revenue lost through tax havens, while small, is not trivial.

⁴ Richard Murphy, John Christensen and Jenny Kimmis, ‘Tax us if you can’, Tax Justice Network, September 2005, p. 4.

⁵ Ibid. , pp. 26-27.

⁶ Ibid. , p. 27.

⁷ Ibid. , p. 27.

⁸ Ibid. , p. 39.

Tax Commissioner Michael D'Ascenzo has recently acknowledged that dealing with tax havens is not an issue that Australia can tackle on its own and for which a global solution is needed. He stated before the parliamentary Public Accounts and Audit Committee that: "There is a limit to how much we can legislate in overseas activity... that's a problem for all countries."⁹

The ATO has admitted that it has difficulty applying existing Australian tax laws to structures such as Liechtenstein "foundations". In their words "Experience has shown that many taxpayers who use these tailored financial structures in tax havens are engaging in tax evasion."¹⁰

The ATO has audited the Vanuatu bank accounts of 80 Australian taxpayers estimated to hold more than \$90 million in false deductions.¹¹ There are also investigations being conducted into 20 Australians who have money in accounts in the tax haven of Lichtenstein, and the ATO hopes to recoup \$100 million in tax.¹²

Given the negative impact that tax havens have on the proper operation of progressive tax systems, the Justice and International Mission Unit welcomes the *Agreement between the Government of Australia and the Government of Australia and the Government of the British Virgin Islands for the Exchange of Information Relating to Taxes (London, 27 October 2008)*. It further encourages the Australian Government to enter into similar Tax Information Exchange Arrangements with other jurisdictions that may be classed as tax havens.

The Unit would also like to take this opportunity to urge that Australia should support the creation of a Code of Conduct for Taxation to be adhered to by governments. Progress is being made on this issue at the UN, and Australia should support the development of such a Code.¹³

The Australian Government should also give serious consideration to supporting the proposal for a World Tax Authority (WTA) that would monitor the impacts of fiscal policies on trade and investment matters, and to protect national tax polices from harmful practices. Despite evidence of the failure of the international tax policies to tackle transfer mis-pricing, thin capitalisation, tax competition and tax avoidance, none of the existing multilateral organisations such as the World Trade Organisation, the World Bank or the International Monetary Fund have intervened to prevent market distortions. In 1999, the former director of fiscal affairs at the IMF, Vito Tanzi, proposed that the prime function of an international tax organisation should be to "make tax systems consistent with public interest of the whole world rather than the public interest of specific countries".¹⁴

⁹ Jewel Topsfield, 'Tax-haven hunt limited', The Age, 4 Oct 2008 and Anne Wright, 'Wickenby racks up more charges', The Herald Sun, 4 Oct 2008, pp. 87-88.

¹⁰ Susannah Moran, 'ATO tells US inquiry of \$18bn from havens', The Australian, 22 July 2008.

¹¹ Anne Wright, 'Wickenby racks up more charges', The Herald Sun, 4 Oct 2008, p. 87.

¹² Jewel Topsfield, 'Tax-haven hunt limited', The Age, 4 Oct 2008

¹³ Tax Justice Network UK, 'Tax Havens Create Turmoil', June 2008, p. 8.

¹⁴ Richard Murphy, John Christensen and Jenny Kimmis, 'Tax us if you can', Tax Justice Network, September 2005, pp. 52-53.

It has been suggested that the most appropriate body to take on the functions of such a WTA would be the UN. This could be achieved by evolving its existing Committee of Experts on International Cooperation in Tax Matters to fill this role.

Such a body could undertake the following tasks:

- Work to establish a common basis for determining taxable income;
- Help set rules for allocating the profit income of transnational companies;
- Assist international exchange of taxation information;
- Help to protect national tax regimes from predatory practices such as tax competition; and
- Collate relevant statistics and act as a forum for discussion and sharing of best practice.

These tasks are essential in the interests of ensuring just tax practises and would not undermine the autonomy of the state, an autonomy which is in any case being threatened to a much greater degree by tax havens.

A WTA could also recommend best practice in creating taxation law. The IMF and World Bank already disseminate best practice in many areas. Tax law should also be an area for application of best practice standards. This would make possible the establishment of an international benchmark for the achievement of tax justice against which progress could be monitored.¹⁵

Yours sincerely,

Dr Mark Zirnsak
Director
Justice and International Mission Unit
Phone: (03) 9251 5265

¹⁵ Ibid, p. 53.

07.4.37.1 The Synod resolved:

Recalling the Statement to the Nation of the Inaugural National Assembly in 1977 committing the Uniting Church in Australia to seek the eradication of poverty in the world, and that in 2004 the Synod committed itself to support the Micah Challenge campaign to halve global poverty by 2015;

- (a) To acknowledge that:
 - (i) there is a need to address corruption within developing countries in order to work towards the eradication of poverty;
 - (ii) some wealthy countries continue to maintain laws and practices that foster, reward and allow them to benefit from corruption in developing countries;
- (b) To repent of the fact that it and its members have been beneficiaries, both unwittingly and also at times with indifference, of corruption in developing countries largely through the purchase of goods from developing countries where those involved in the production of the goods have been exploited and cheated through corruption;
- (c) To commend the Australian Government for the efforts it has made so far in addressing corruption, especially by:
 - (i) The introduction of comprehensive domestic legislation and regulations on anti-money laundering and counter terrorism financing;
 - (ii) Being a party to the United Nations Convention against Corruption and the OECD anti-bribery Convention;
 - (iii) Tightening the Criminal Code with regard to bribery by Australian companies in foreign countries;
 - (iv) The Australian Taxation Office being part of the OECD's Forum on Harmful Tax Practices; and
 - (v) Issuing the AusAID anti-corruption policy 'Tackling corruption for growth and development';
- (d) To call on the Australian Government to take further measures to tackle global corruption, specifically by:
 - (i) Continuing to fund anti-corruption and good governance projects within developing countries in the Asia-Pacific region, including support for anti-corruption campaigners;
 - (ii) Encouraging more countries and corporations to sign up to and implement appropriate multilateral agreements to combat corruption such as the UN Convention against Corruption, the OECD Anti-Bribery Convention and the Extractive Industries Transparency Initiative;
 - (iii) Supporting an international approach to eradicating tax evasion and sharing information on tax administration;
 - (iv) Supporting programs which enhance the protection of journalists and whistleblowers in developing countries;

- (v) Introducing guidelines that discourage lending or insurance of lending by EFIC (Australia's Export Credit Agency) towards projects where there is dubious development benefit, where there is an unacceptable risk of non-repayment or where there are not adequate human rights or environmental safeguards;
 - (vi) Supporting the promotion of a global culture of respect for basic human rights, so that those seeking to tackle corruption do not become the targets of human rights abuses;
 - (vii) Advocating for reforms of the World Bank and International Monetary Fund (IMF) that enhance democratic representation and transparency;
 - (viii) Pressuring the World Bank, IMF and the Asian Development Bank to deal promptly with companies found to have engaged in corruption, and with sufficient penalties to deter other companies from engaging in corruption; and
- (e) To write to the Australian Prime Minister, the Minister for Foreign Affairs, the Treasurer, the Attorney General, the Parliamentary Secretary to the Minister for Foreign Affairs, the Leader of the Opposition, the Shadow Minister for Foreign Affairs and the Shadow Attorney General to inform them of this resolution.