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Gerry Antioch
General Manager
Tax System Division
The Treasury
Langton Crescent
Parkes ACT 2600

24 April 2013

Dear Mr. Antioch,

Improving the transparency of Australia's business tax system

Publish What You Pay (PWYP) Australia welcomes the opportunity to provide this submission to the Government's consultation on improving the transparency of the business tax system, specifically its proposal on 'Transparency of tax payable by large and multinational businesses'.

PWYP Australia is a coalition of 29 humanitarian, faith, environmental, research and union organisations campaigning for greater transparency and accountability in the extractive industries that enjoy broad support across the Australian community. PWYP Australia works with the international PWYP network of over 700 civil society organisations to ensure that mining and oil and gas revenues are used for economic development and poverty reduction in resource-rich countries, including Australia.

We are advocating for the Government, as part of its response to this consultation, to introduce rules that require **extractive companies listed or based in Australia to disclose all payments made to governments on a country-by-country and project-by-project basis** in line with United States and forthcoming European Union legislation.

Aside from helping tackle aggressive tax minimisation, increased transparency of payments made by extractive companies provides a wide range of benefits. It mitigates risks of corruption and enables populations to hold their governments to account over the exploitation of non-renewable natural resources. It empowers policymakers and citizens to ensure that the wealth generated by extractive industries is used to fund sustainable development and reduce aid dependency in resource-rich countries. Increased transparency also enables investors to better assess the financial, political and reputational risks to which extractive companies are often exposed, while fostering more stable operating environments that enhance prospects for investment returns. Indeed, there is now the possibility that Australian extractive companies will lose out on investment to competitors on markets that are introducing transparency requirements.

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Actionaid Australia | AID/WATCH | Anglican Overseas Aid | Australian Conservation Foundation
Australian Council for International Development | A Billion Little Stones | Burma Campaign Australia | Caritas Australia
Catholic Mission | ChildFund Australia | Columban Mission Institute | CAER – Corporate Analysis. Enhanced Responsibility.
Conservation Council of Western Australia | CFMEU – Mining and Energy | Economists at Large | Friends of the Earth Australia
Global Poverty Project | Human Rights Law Centre | Jubilee Australia | Mineral Policy Institute | Oaktree Foundation
Oxfam Australia | SEARCH Foundation | SJ Around The Bay | Tear Australia | Transparency International Australia
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In this period of intense competition for access to natural resources in Africa and elsewhere and as the tax affairs of multinational businesses come under ever greater scrutiny, transparency of payments to governments provides extractive companies with the means to demonstrate the economic contributions they make in the countries where they operate.

On 9 April, a global transparency standard for the extractive industries emerged when the European Union finalised negotiations to amend its Accounting Directive, which will require EU-registered extractive companies to publish the payments they make to governments worldwide.¹ This legislation will be formally voted on by the European Parliament in June and is expected to extend to all EU-listed companies, including those registered outside the EU, with the forthcoming Transparency Directive. It follows the passing of a similar provision in the United States Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 which is now in force via implementing regulations issued last August.² Together, the US and EU laws will cover about 65 per cent of the value of the global extractives market, and over 3,000 companies, including most of the international oil and mining majors, as well as Chinese, Russian, Brazilian and other state-owned companies. **Companies listed in the US and EU that operate in Australia will be required to disclose payments they make to the Commonwealth, State and Territory governments.**

Norway has also committed to introduce from 1 January 2014, rules that will at least align with the EU requirements³ and in Canada an industry-civil society working group is currently developing a framework for the disclosure of payments to governments by Canadian mining companies. The Canadian Government will make policy recommendations for the adoption of extractive industry disclosure requirements in June following the completion of this work.⁴

Extractive companies seeking to raise capital on the Hong Kong and London AIM stock exchanges are already mandated to disclose payments to governments as part of their initial listing requirements.

Similar global reporting standards are beginning to emerge in order to tackle aggressive tax minimisation and avoidance practices by banks and companies across all sectors:

- On 16 April, the European Parliament adopted rules, under its new Capital Requirements Directive (CRD IV), that will require banks to disclose turnover, profits-made, taxes-paid, public subsidies received and staff levels on a country-by-country basis.⁵
- In the United States Senate, Carl Levin and Sheldon Whitehouse have introduced legislation that requires all multinational companies to provide a country-by-country breakdown of their revenues, tax payments and employees.⁶
- In the United Kingdom, the Tax and Financial Transparency Bill (HC Bill 166), currently before the UK Parliament, advocates for every company incorporated in or operating in the UK to publish in its annual financial disclosures consolidated turnover and tax paid under each jurisdiction in which the company operates.⁷

¹ Proposal for a Directive of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, 9 April 2013:

www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0684:EN:NOT

See also Statement by European Commissioner Michel Barnier on 9 April 2013:

www.europa.eu/rapid/press-release_MEMO-13-323_en.htm

² United States Dodd-Frank Bill Section 1504, 2010. For the SEC's final rules, adopted 22 August 2012, please visit:

www.sec.gov/rules/final/2012/34-67717.pdf

³ www.regjeringen.no/en/dep/ud/campaigns/dialog_forside/johnsen_lr.html?id=697043

⁴ Canadian Government Response: Sixth Report of the Standing Committee on Foreign Affairs and International Development Recommendation 10: www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6030574&Language=E&Mode=1&Parl=41&Ses=1

⁵ www.ec.europa.eu/internal_market/bank/regcapital/new_proposals_en.htm

⁶ www.levin.senate.gov/newsroom/press/release/summary-of-the-cut-unjustified-tax-loopholes-act

⁷ www.publications.parliament.uk/pa/bills/cbill/2010-2011/0166/cbill_2010-20110166_en_2.htm#l1g3

Transparency of tax payable by large and multinational businesses

Under its proposal, ‘Transparency of tax payable by large and multinational businesses’, the Government proposes to disclose tax information paid only in Australia. If the intention of the proposal however, is indeed to ‘encourage enterprises to pay their fair share of tax and discourage aggressive tax minimisation practices’, a pre-requisite of this must be to require disclosure of information for all countries where companies pay tax in order to expose profit shifting. **The interconnectedness of the world’s economies and the ability of multinational companies to use this to circumvent national tax jurisdictions mean that payments by multinational companies to governments overseas need to be included.**

The extractive industry transparency legislation and the proposals for other sectors in the United States and European Union require multi-country disclosure of payment information in order to help ensure that companies pay their fair share of taxes in the countries where they operate. Such transparency, particularly in the extractives sector, will not only help strengthen tax systems and ensure that this income is used for the public good but will also help inform the debate in Australia as to whether the public is receiving a fair deal for their finite natural resources.

Unlike the US and EU legislation, the Government proposes that it legislates on what it discloses rather than what companies disclose. While it is welcome for the Government to provide information on payments received from companies, limiting disclosure to the Government only would prevent the disclosure of multi-country payment information by companies which is essential for combating aggressive tax minimisation practices and reducing corruption in many resource-rich countries around the world.

Disclosure by companies in addition to government disclosure would, however, also allow for the reconciliation of government revenues and tax payments and for any discrepancies to be identified. This complementary disclosure approach aligns with the Extractive Industry Transparency Initiative (EITI), which the Australian government supports and is currently piloting, and provides for accountability of both company and government entities.

Further, it was the US and EU legislators’ intention for their disclosure rules to complement and strengthen the EITI by codifying its best practices. Payment disclosure requirements will lead to the generation of timely, disaggregated and easily comparable data, raising the bar for EITI reports, and will apply to those countries that remain outside the voluntary system. The United States Government has acknowledged the complementary relationship between the two mechanisms by committing to implement the EITI in addition to introducing legislation. The British and French Governments have also signaled their intentions to implement the EITI.

PWYP Australia recommends that the Government disclose tax revenues from companies with a total income of \$100 million, and also require – in order to align with US and EU legislation – *all companies to disclose the tax they pay to governments on a country-by-country basis.*

Extractive companies and those that pay the MRRT or PRRT should be required to disclose, in addition to tax information, all other significant payments to governments such as royalties, signature bonuses and license fees.⁸

⁸ Under the US rules, extractive companies are required to report any payment or series of payments that equal or exceed USD 100,000 in a fiscal year. In the EU the threshold is EUR 100,000.

In order to align with US and EU legislation extractive companies should disclose such information on a project-by-project basis. This is vital to identify and prevent corruption and to help ensure that revenues benefit communities impacted by resource extraction activities.

Specifically, project-by-project reporting will be of great assistance to Parliaments, local governments and citizens as they monitor the extent to which intergovernmental transfers adhere to distribution rules that determine how much of a company's total project payment is distributed to local governments or communities. In countries that have fiscally decentralised or are undergoing fiscal decentralisation, such as Indonesia, the Philippines, Cambodia and other countries of strategic interest to the Government and companies listed in Australia, there is little public information to monitor this large flow of revenues to local governments, providing a ripe incentive for government corruption. The data produced by project reporting will not only produce evidence needed to address corruption risks, but will reduce incentives for corruption in fiscal transfers.

Including total income and taxable income aligns with the proposals in the US and UK and will help ensure that companies pay their fair share of tax.

Compliance costs

In terms of compliance costs, companies already collect and track the data that would need to be disclosed. They keep books and records for themselves and their subsidiaries under existing securities laws, to comply with national anti-bribery statutes and for their internal accounts.

Extractive companies also keep records of project-level payment data. Australian listed companies that operate in the US already report on a lease level to the US Department of Interior, others publicly report payment information by lease/license voluntarily or do so as required by the World Bank, the new EITI rules or other national law. Australian listed companies cross-listed in the US and/or the EU, including BHP Billiton and Rio Tinto, will be required to report at project level from October 2013 in the US and within the next two years in the EU.

Estimates of the cost of project-level reporting, in the low millions of dollars, are put in perspective by the record profits enjoyed by the large mining companies: for the last financial year BHP Billiton and Rio Tinto made profits of USD 15.4 billion and USD 5.8 billion respectively.

The European Commission has estimated the cost of project-level reporting for 171 companies to be 0.05% of annual revenues in the first year and less thereafter. Auditing the data would involve additional costs, but Shell's global audit bill for 2009 was just 0.16% of pre-tax profits.

In its final rules for the US legislation, the Securities and Exchange Commission, using Barrick Gold's estimate of time required to comply with the legislation and its own estimate of USD 400 per hour costs, stated the following:

Barrick Gold estimated that it would require 500 hours for initial changes to internal books and records and processes, and 500 hours for ongoing compliance costs. At an hourly rate of \$400, this amounts to \$400,000 (1,000 hours x \$400) for hourly compliance costs. Barrick Gold also estimated that it would cost \$100,000 for initial IT/consulting and travel costs for a total initial compliance cost of \$500,000. As a measure of size, Barrick Gold's total assets as of the end of fiscal year 2009 were

approximately \$25 billion. As a percentage of Barrick Gold's total assets, initial compliance costs are estimated to be 0.002% (\$500,000/\$25,075,000,000).⁹

As noted above, with around 65 per cent of the global extractive market covered by country and project level payment disclosure requirements, including companies that represent just under \$300 billion in market capitalisation on the Australian Securities Exchange, there is in fact the risk in the near term that Australian issuers will attract less investment if they do not disclose comparable data.¹⁰ Payment disclosure is required in all major extractive markets in order to level the playing field and to protect those companies that act within the law from unfair competition and potential accusations of corruption that could lead to reputational damage.

The Financial Services Council, which represents 128 members that invest \$1.8 trillion per year, and the Australian Council of Superannuation Investors, which represents members with more than \$300 billion in funds under management, support such disclosure in Australia as it will enable their members to compare and evaluate Australian companies, using the same type and level of information, with those listed on competing global markets.¹¹

As a major mining nation and as the next chair of the G20, which has transparency in the extractive industries as a central item on its Anti-Corruption Working Group agenda, Australia has an important opportunity to show leadership in the region by adopting a country-by-country and project-by-project reporting requirement for extractive companies. We strongly encourage the Government to recognise the global momentum and give this recommendation its upmost consideration.

Yours sincerely,



Claire Spoons
Coordinator, Publish What You Pay Australia

⁹ Page 184: www.sec.gov/rules/final/2012/34-67717.pdf. The SEC notes that the figure of USD 400 'is the rate we use to estimate outside professional costs for purposes of the PRA. Although we believe actual internal costs may be less in many instances, we are using this rate to arrive at a conservative estimate of hourly compliance costs.'

¹⁰ ASX 200 companies include: BHP Billiton, Rio Tinto, Alcoa Inc, Alumina and Medusa Mining.

¹¹ ACSI submission to the ASX consultation on Reserves and Resources Disclosure Rules for Mining and Oil & Gas Companies, 27 January 2012:

www.acsi.org.au/images/stories/subs_pres_speeches/12%20Submission%20to%20ASX%20Listing%20Rules%20Review%20Paper.pdf
FSC letter to the ASX, 29 September 2011:

www.fsc.org.au/downloads/file/SubmissionsFile/2011_0928_LettertoAustSecuritiesExchangersAustralianImplementationofExtractiveIndustriesTransparencyInitiative.pdf