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Dear Sir/Madam,

Implications of the Modern Global Economy for the Taxation of Multinational Enterprises

As an academic specialising in the area of governance of the extractive firms in developing states I am pleased to provide this submission to the Treasury consultation 'Implications of the Modern Global Economy for the Taxation of Multinational Enterprises'. In particular, my submission focuses on consultation Question 1 – 'views are sought on the extent to which another country not exercising its right to tax should be a matter of concern to Australia'.

As a PhD candidate in the Department of Government and International Relations at the University of Sydney my research is largely focused on the role extractive industries can play in alleviating poverty and underdevelopment in developing states. This submission should be accepted as a reflection of my personal views, not the views of my employer/host institution. My experience in this area was developed originally through employment in the investment-banking sector, followed by ongoing interactions with both mining firms and those working on development in sub-Saharan Africa as well as our region. My research output and publications are available upon request.

The Treasury consultation process is timely, particularly in terms of consultation question 1, which asks to what extent Australia should be concerned with the ability of other countries to exercise their right to taxation. Recent changes to legislation in the United States and the United Kingdom as well as proposed changes to European Union regulations have contributed to a growing acceptance that responsibility for taxation of multinational firms starts in their home country. In addition, these changes have increased calls for Australia to implement similar legislation requiring that all extractive firms domiciled in Australia, or listed on the Australian Stock Exchange, publish the details of their fiduciary relationships with foreign governments. Effectively, mandating that firms publish what they pay, on a country-by-country and project-by-project basis. These calls have come from

mining and mineral ministers in developing and developed states, as well as from global coalition, Publish What You Pay¹.

As has been realised by leaders within the US, UK and EU – the benefits of this type of legislation far outweigh the costs. This is highly apparent in our immediate region, where Australian mining firms remain at the forefront of exploration, development and operation of extractive projects. There is little doubt that transparency in the extractive industries is the first step towards full accountability for the collection and distribution of natural resource incomes in developing states. To this end, several countries in our neighbourhood are in the process of implementing the Extractive Industries Transparency Initiative (EITI), and Australia is itself piloting the program. Countries who join the EITI are required to legislate for full disclosure of payments made by companies and those received by governments – the reconciliation of which is then made publicly available². Within our region Timor Leste is a fully compliant member, the Solomon Islands is in the process of implementing the requirements of the EITI and is considered a candidate country while Papua New Guinea has signalled its intentions to become a candidate country by the end of 2013³.

Australian mining companies are highly active in these three countries – and it is here that transparency legislation, as implemented by Australia, has significant potential to assist in alleviating poverty and underdevelopment as well as contributing to regional stability. However, one of the greatest challenges facing these states in implementing any kind of transparency legislation is the mismatch in resources (both financial and legal) between small states and large mineral extraction firms. In response to this hurdle, the United States added a measure into its Dodd–Frank Wall Street Reform and Consumer Protection Act, which demands all SEC listed oil, gas and mining firms publish the taxation and royalty payments they make to overseas governments⁴. Similarly, the European Union has recently agreed on amendments to their Accounting Directive, which will be voted on in July. The amendments make the same demands of EU domiciled companies (including large companies not listed on a stock exchange) and extend them to the forestry sector⁵. These legislative changes are in addition to similar rules implemented in the UK and South Korea.

If Australian mining companies were required, by law, to publish the fiduciary details of their relationships with governments around the world, much of the challenge in EITI implementation for small states, including those in our immediate neighbourhood, would have been effectively achieved. This would not only circumvent the negotiating issues noted above, but would free up the limited resources of each in-country EITI team to focus on the publication and dissemination of the information collected – a process central to the shift from transparency to accountability.

While some firms have been hostile to the introduction of transparency legislation, notably oil and gas firms in the United States, there are companies who have openly embraced transparency in their dealings with foreign governments. These include, but are not limited to, AngloGold Ashanti, Newmont Mining and Statoil – all of whom publish details on a

¹ <http://www.publishwhatyoupay.org/>

² <http://eiti.org/eiti>

³ <http://eiti.org/countries>

⁴ <http://www.sec.gov/spotlight/dodd-frank/speccorpdisclosure.shtml>

⁵ http://europa.eu/rapid/press-release_MEMO-13-323_en.htm

country-by-country basis⁶. While Rio Tinto, seen as one of the most open mining majors, publishes details of taxes and royalties paid at all levels of government⁷. These firms' willingness to implement their own transparency policies is a reflection of the belief that transparency is good for business, however it also suggests that implementation costs are not prohibitive. There is no doubt that firms already have access to this level of detail in their financial accounts, with much of it already disseminated internally. Furthermore, some of Australia's largest mining houses will be forced under the US, UK and EU legislation to publish these details in the near future.

As is stands, Australia remains out of step with the rest of the international community in demanding transparency and disclosure from its companies operating in overseas jurisdictions. The benefits of an open and transparent mining sector in developing states are clear. This is an opportunity for Australia to play a positive role in its region by furthering the aims of the EITI, and groups such as Publish What You Pay, while encouraging accountable and responsible leadership in its nearest neighbours. This consultation comes at a highly pertinent time for Australia, and provides an opportunity to legislate for improved practice from our multinational mining firms while at the same time meeting the growing expectations of the international community.

Yours faithfully,



Ainsley Elbra

⁶ See the companies' sustainability statements for full details
<http://www.anglogold.com/Sustainability/Global+initiatives/ExtractiveIndustriesTransparencyInitiative.htm>
<http://www.newmont.com/sustainability/enhancing-our-performance>
<http://www.statoil.com/annualReport2011/en/Sustainability/Society/PositiveLocalImpacts/Pages/Gov'tPaymentsContributions.aspx>

⁷ <http://www.riotinto.com/ourcommitment/taxes-paid-in-2012-4757.aspx>