

**Global Witness submission to the Australian Government
consultation on the Implications of the Modern Global
Economy for the Taxation of Multinational Enterprises**



global witness

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Global Witness welcomes this opportunity to contribute to the Australian Government consultation on the Implications of the Modern Global Economy for the Taxation of Multinational Enterprises.

Global Witness is a UK-based non-profit organisation that conducts research and campaigns to improve governance in the natural resource industries.¹ Established in 1993, Global Witness was nominated for a Nobel Peace prize in 2003 and is a co-founder of the international Publish What You Pay coalition, a network of over 700 civil society organisations across five continents that campaigns for greater transparency in the oil, gas and mining industries.²

This submission responds to the consultation question **“Views are sought on the extent to which another country not exercising its right to tax should be a matter of concern to Australia”** (p11 of the Issues Paper).

The extent to which other countries, in particular developing countries, are able to exercise their right to tax should be of significant concern to Australia. Developing countries lose far more revenue to tax avoidance and evasion than they receive in aid.³ Without being able to raise more taxes, developing countries will remain dependent on aid and trapped in a cycle of poverty and instability. This goes against the interests of Australian taxpayers who pay for aid, and Australian companies who seek to invest in economically thriving and politically stable countries.

It is in Australia’s interest, therefore, that developing countries are able to exercise effectively their right to tax. The following sections recommend two simple measures that the Australian Government could consider adopting to help achieve this important goal.

1) The new global standard for extractive industry revenue transparency

One way in which the Australian Government could enable resource-dependent developing countries to raise more revenue is to require extractive companies listed on the Australian Securities Exchange (ASX) to report their revenue payments to governments on a project-by-project basis. Detailed disclosures of extractive industry payments, such as taxes, royalties, fees and bonuses, would enable resource-dependent countries to raise revenues more effectively.

¹ www.globalwitness.org

² www.publishwhatyoupay.org

³ Christian Aid (2008) ‘Death and taxes: the true toll of tax dodging’, London: Christian Aid

Payment disclosure would also benefit Australian investors, which would be better able to identify and manage material risks in what are often high-risk operating environments. Disclosure of tax payments, for example, would provide investors with an understanding of relative exposure to internal risk, as well as with evidence that a company has an efficient capital structure.⁴

The benefits to investors are clearly demonstrated by the support given to project-by-project reporting by the Australian Financial Services Council and the Australian Council of Superannuation Investors, which together represent members with assets worth over AUS\$2 trillion.⁵

Increased transparency of revenue payments would also help to reduce corruption, which fuels political instability and in some cases violent conflict.⁶ Such volatility in turn leads to higher operational costs, interruptions to supply and reputational damage that threatens the long-term shareholder value of extractive companies. For example, around 230 ASX-listed extractive companies operate in Africa, where opacity around mining and oil revenues has contributed to political instability and increased reputational risks for international resource firms.⁷

Revenue payment disclosure also enhances extractive companies' 'social licence' to operate, as it demonstrates their economic contributions to society. Furthermore, by deterring corruption, it fosters fairer, more open competition and protects companies from the costs of bribery and corruption.

As extractive companies already keep records of revenue payments for internal accounting purposes, disclosing them would not add significant costs. Information on basic concession terms such as royalty rates and bonuses are already widely known within industry circles, and payment data does not constitute the type of information that could be deemed commercially sensitive, such as geological data or proprietary technology.⁸ Indeed, some ASX-listed companies have already reported revenue payments on a voluntary basis or through the Extractive Industries Transparency Initiative (EITI)⁹ without any adverse effect on their competitive position.¹⁰

Several important jurisdictions have recently enhanced disclosure requirements for extractive companies, and others are coming under pressure to follow suit. The U.S. introduced project-by-project reporting in 2012 through the implementing rules for

⁴ Calvert Investments, submission to the U.S. Securities and Exchange Commission, 1 March 2011:

<http://www.sec.gov/comments/s7-42-10/s74210-40.pdf>

⁵ Publish What You Pay Australia 'Australia – an unlevel paying field: extractive industry transparency on the ASX 200', May 2013.

⁶ Humphreys, M; Sachs, J; & Stiglitz, J (2007) *Escaping The Resource Curse*, New York: Columbia University Press.

⁷ Oxfam Australia (2011) 'the Australian Securities Exchange: extractive industry companies and payment disclosure', Carlton: Oxfam Australia.

⁸ Revenue Watch Institute, 'Costs & criticisms: the facts about disclosure rules', 7 September 2011.

⁹ The EITI is a global alliance of governments, industry and civil society groups that promotes a standard for transparency in the extractive industries, including over revenue payments, in 39 countries: www.eiti.org

¹⁰ For example, Rio Tinto and Bhp Billiton have reported revenue payments, albeit selectively and not always at project level.

Section 1504 of the Dodd-Frank Act, and in April 2013 the EU agreed to mirror the U.S. law through the new Accounting and Transparency Directives.

Five of the largest ten extractive companies on the ASX are listed in the U.S. or EU, and are therefore required to comply with project-level reporting rules.¹¹ Together, the U.S. and EU laws cover around 65% of the market capitalisation of oil, gas and mining companies that are listed on the world's most important stock exchanges, including most of the international mining and oil and gas majors, as well as Chinese, Russian, Brazilian and other state-owned companies. Any U.S.- or EU-listed extractive company that operates in Australia will be required to disclose payments they make to the Commonwealth, State and Territory governments.

Introducing project-by-project reporting for ASX-listed extractive companies would therefore level the playing field for firms that are already required to make such disclosures.

In May 2013, the EITI agreed a new standard that will require companies to report their revenue payments on a project-by-project basis in all 39 of the EITI's implementing countries.¹² Twenty-seven of the ASX's top 100 extractive companies operate in countries that are either EITI compliant or candidate countries, and will therefore be required to report project-level payments. While the new EITI standard is a very welcome development, the ASX hosts over 1,000 mining, oil and gas firms.¹³ This underlines the need to level the playing by ensuring all extractive companies adhere to this emerging global standard through mandatory rules.

The UK is using its presidency of the G8 to encourage world leaders to advance a common global standard for extractives companies to report payments project-by-project,¹⁴ and the Canadian government is considering the adoption of project-level disclosure rules. Extractive industry transparency is a central pillar of the G20's Anti-Corruption Working Group, and as political support for mandatory reporting grows, other key countries such as China and India are coming under increasing pressure to implement this measure.

Mining, oil and gas companies make up nearly half of ASX-listed firms, and have a combined market capitalisation of approximately AUS\$443 billion.¹⁵ This puts the ASX in the top ten most important stock exchanges for the extractive industry in the world. By making a simple change to ASX reporting requirements, Australia would make a crucial contribution to instituting a global reporting standard for the extractive industries, and establish itself as a world leader in the movement to promote transparency as a means to mobilise resources and reduce poverty in the developing world.

¹¹ Publish What You Pay Australia 'Australia – an unlevel playing field: extractive industry transparency on the ASX 200', May 2013.

¹² Thomson Reuters Foundation, 'Campaigners welcome new extractive transparency standard', 23 May 2013.

¹³ Oxfam Australia (2011) 'the Australian Securities Exchange: extractive industry companies and payment disclosure', Carlton: Oxfam Australia.

¹⁴ Rt Hon David Cameron MP, 'The UK's G8 agenda – increasing trade, fairer taxes and greater transparency', 13 May 2013.

¹⁵ Oxfam Australia (2011) 'the Australian Securities Exchange: extractive industry companies and payment disclosure', Carlton: Oxfam Australia.

2) Publishing companies' beneficial ownership information

The Australian government could enable developing countries to raise public revenues more effectively by requiring the Australian Securities and Investments Commission company register to collect and publish information on the beneficial ownership of companies.

The use of anonymous shell companies is a major obstacle to countries exercising their right to tax and raise public revenues. It can be incredibly difficult to identify the names of the beneficial owners of companies. This opacity allows tax evasion and other crimes such as corruption, money laundering and drug trafficking to take place largely undetected.¹⁶

According to research by Global Financial Integrity, developing countries lost US\$5.86 trillion through such illicit financial flows from 2001 to 2010.¹⁷ This deprives some of the poorest countries in the world of much needed revenue that could be used to fund economic development.

Global Witness' investigations have shown how through the use of anonymous shell companies, the people of the Democratic Republic of Congo lost out on billions of dollars of revenues when their copper and cobalt mines were sold. The mines were bought by companies incorporated in the British Virgin Islands at a fraction (sometimes 1/16th) of their real value, then sold on – to FTSE 100 companies – for closer to their true market value. In doing so, someone pocketed a fortune and billions were diverted from the DRC's public finances.¹⁸

The recent report from the Kofi Annan-led Africa Progress Panel revealed that Congo lost at least \$1.36 billion from the under-priced sales of mining assets between 2010 and 2012, in deals involving companies registered in British overseas territories. This is almost twice the country's annual spending on health and education combined. The report called for the public disclosure of beneficial ownership information.¹⁹

To stop the abuse of anonymous shell companies, existing company registers should collect and publish beneficial ownership information. This solution is better than the status quo and it is cheaper. There have been two cost/benefit analyses carried out looking at the costs of a beneficial ownership registry, one by the UK government and one by the European Commission. Both conclude that making beneficial ownership information would be more cost effective than the status quo.²⁰

¹⁶ Tax Justice Network (2013) 'Tax us if you can', Chesham: Tax Justice Network.

¹⁷ Global Financial Integrity (2012) 'Illicit financial flows from developing countries: 2001-2010', Washington DC: Global Financial Integrity.

¹⁸ Global Witness (2013) 'Anonymous companies: how hidden company ownership is a major barrier in the fight against poverty and what to do about it', London: Global Witness.

¹⁹ Africa Progress Panel (2013) 'Equity in extractives: stewarding Africa's natural resources for all', Geneva: Africa Progress Panel.

²⁰ HM Treasury/DTI, 'Regulatory impact analysis, Disclosure of beneficial ownership of unlisted companies', July 2002 http://www.hm-treasury.gov.uk/d/ownership_long.pdf; European Commission, 'Cost benefit analysis of transparency requirements in the company/corporate field and banking sector relevant for the fight against money laundering and other financial crime', 27 February 2007 http://transcrimecs.unitn.it/tc/fso/publicazioni/AP/CBAStudy_Final_Report_revised_version.pdf

This is because any increase in the cost to companies of reporting their beneficial ownership to a registry would be offset by a decrease in the costs to financial intermediaries who have to carry out customer due diligence, as well as savings to tax authorities, the police and the companies themselves by avoiding repeated requests for beneficial ownership information.

Requiring beneficial ownership information to be put in the public domain does not involve much red tape. For example, in the UK, it is estimated that only 1% of companies have beneficial owners who are distinct from their legal shareholders. In other words, 99% of UK companies would find it extremely easy to find out who their beneficial owner is.²¹

This issue has been on the agenda of the G20's Anti-Corruption Working Group, and the upcoming G8 summit in Northern Ireland is due to discuss the question of how to ensure access to company ownership data. The UK Prime Minister has committed the UK to creating registries of beneficial ownership information.

Global Witness is calling on all countries to require companies to put information about their beneficial owner(s) in the public domain, available for free, in open data format, in line with agreed standards. The easiest way to achieve this involves using existing corporate registries, whether currently compiled at a national or sub-national level.

Similarly, governments should require the names of the people behind trusts and foundations to be put in the public domain. Tightly defined exemptions should be available for companies with legitimate security concerns. These companies could apply to the authorities for an exemption from having to reveal their beneficial ownership information.

Thank you for considering these recommendations. If you would like further clarification on these or any other points relating to tax issues in developing countries, please do not hesitate to contact Global Witness.

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²¹HM Treasury/DTI, 'Regulatory impact analysis, Disclosure of beneficial ownership of unlisted companies', July 2002 http://www.hm-treasury.gov.uk/d/ownership_long.pdf