



PUBLISH WHAT  
YOU PAY  
AUSTRALIA

2<sup>nd</sup> September 2022

Assistant Secretary  
Corporate and International Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600  
Sent via email: [MNETaxIntegrity@treasury.gov.au](mailto:MNETaxIntegrity@treasury.gov.au)

Dear Assistant Secretary,

We thank you for the opportunity to make a submission to the Commonwealth Government's consultation on Multinational Tax Integrity and Tax Transparency.

Publish What You Pay (PWYP) Australia is a civil society coalition of anti-corruption, human rights, faith-based, environment, and union organisations campaigning for greater transparency and accountability in the mining, oil and gas sectors.<sup>1</sup> We work with the global PWYP coalition, a network of over 1,000 organisations in more than 51 countries around the world, united in our call for an open and accountable extractive industries sector, so that communities share in the benefits of our natural resources and a just transition.

Citizens, industry, and governments all benefit from transparency. Enhancing tax integrity and transparency by multinational enterprises (MNEs) including through measures such as public reporting of tax information on a country-by-country (CbC) basis and mandatory reporting of material tax risks to shareholders will have enormous benefits for all Australians.

Australia's vast mineral, oil and gas reserves ultimately belong to its citizens. Enhancing tax transparency in the extractive industries is particularly important given that the sector is one of the world's most corrupt.<sup>2</sup> The sector should therefore be one of the most transparent and accountable yet this is not the case. Improving tax transparency of the Australian extractive industry through the Government's MNE tax integrity and transparency initiative would also have globally important ramifications and would be widely welcomed.

The minerals, oil and gas extracted by companies in Australia belong to all Australians and should be treated as a shared resource, and an inheritance for future generations. The same is true for the natural resources of other countries, especially resource rich but poor countries. We note that there are more than 700 extractive industries companies listed on the Australia Securities Exchange (ASX), operating in more 80 countries, many of which are conflict or corruption prone.

To meet the challenges of the energy transition, Australia must grow critical mineral industries and phase out fossil fuel extraction. Additionally, Australia's is the world's largest LNG exporter but still faced gas shortages in 2022. These examples further demonstrate the need for greater transparency and integrity from the Australian extractives sector. Communities rightfully want to know how much companies pay in taxes, royalties and other payments, including at the level of a particular mining or gas project, and how they actually benefit from the extraction of our shared resources.

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<sup>1</sup> For more information on the 30 organisations that make up the PWYP Australia coalition go to: [www.pwyp.org.au](http://www.pwyp.org.au)

<sup>2</sup> See for example <https://www.oecd.org/dev/Corruption-in-the-extractive-value-chain.pdf>

We also welcome the announcement by the Commonwealth Government to introduce a public register of beneficial ownership to improve transparency on corporate structures.

I enclose the following submission for your consideration and look forward to discussing these issues in more detail over the coming months. This submission focusses on Part 3 of the consultation paper and includes answers to some but not all questions covered in the consultation.

Yours sincerely,

A handwritten signature in black ink that reads "Clancy Moore". The signature is written in a cursive, flowing style.

Clancy Moore  
CEO, Transparency International Australia  
(on behalf of the Publish What You Pay Australia coalition)  
[clancy.moore@transparency.org.au](mailto:clancy.moore@transparency.org.au)

# Multinational Tax Integrity and Tax Transparency Consultation

## **PART 3. 1. Are there any specific features you would introduce to improve how MNEs publicly report tax information?**

PWYP Australia is very supportive of the Commonwealth Government's intention to require CbC reporting as part of its tax integrity and transparency initiative. We agree that CbC reporting helps to improve community awareness around the arrangements of large MNEs by highlighting the amount of tax these entities pay, and that enhanced scrutiny of MNEs' tax information levels the (information) playing field, which, in turn, can assist in better informing the public debate on MNE tax compliance.<sup>3</sup>

However, for extractive industries companies, it is critically important that tax information is reported on both a CbC and project-by-project basis (PbP). Project-level disaggregation is important because corruption risks and tax non-compliance are higher at the project level. Environmental and social impacts also happen at the project level. Furthermore, it is only at the project level that a community can realistically see if they are benefiting from an extractive industry project. The information gained from PbP reporting can help communities and civil society organisations like PWYP hold companies to account, comparing payments to governments with actual activities and production at specific sites as well as fiscal, legal and contractual terms.

The benefits to companies and governments of PbP reporting is also increasingly understood,<sup>4</sup> and we note that the International Council of Mining & Metals commits its members (which includes some of Australia's largest mining companies) to the public disclosure of material payments to governments by country and by project.<sup>5</sup> Furthermore, the Extractive Industries Transparency Initiative (EITI) – the gold standard for transparency and reporting for a country's domestic mining, oil and gas sector – also includes a requirement of PbP level reporting. There are 24 large mining, oil and gas companies that are official EITI supporters operating in Australia who are expected to report at the PbP level.<sup>6</sup>

Polling commissioned by PWYP Australia revealed that 88% of Australians believe the government should make Australian mining, gas and oil companies publish the taxes they pay at a project level both in Australia and overseas.<sup>7</sup>

Improving how MNEs publicly report tax information must therefore include sector specific requirements in some instances, including by requiring PbP reporting for the extractive industries sector.

## **4. Should Australia mandate improved tax transparency regime in line with the EU's approach to public CbC reporting? If so, why?**

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<sup>3</sup> Australian Government Treasury, (2022), *Government election commitments: Multinational tax integrity and enhanced tax transparency Consultation paper*, accessed: <https://treasury.gov.au/sites/default/files/2022-08/c2022-297736-cp.pdf>, page 21

<sup>4</sup> See for example <https://eiti.org/documents/project-level-reporting-extractive-industries>

<sup>5</sup> ICCM, (2021), *Transparency of Mineral Revenues: Our position statement*, accessed: <https://www.icmm.com/en-gb/our-principles/position-statements/mineral-revenues>

<sup>6</sup> See list of EITI supporting companies globally here: <https://eiti.org/companies>

<sup>7</sup> PWYP, (2020), *Polling shows Australians call for more transparency in big mining and gas companies*, accessed: <https://www.pwyp.org.au/news/polling-shows-australians-call-for-more-transparency-in-big-mining-gas-companies>

**a) What sorts of entities (based on revenue or entity structure) should this mandate apply to?**

**b) Please provide details of any compliance costs associated with adopting the EU's approach to public CbC reporting.**

Australia should mandate improved tax transparency similar to approaches in the 27 EU nations, Canada, Norway, Switzerland, and UK. In Canada for example, the Extractives Sector Transparency Measures Act gives the public access to data on project-level royalty, tax and other payments made by oil, gas and mining companies to the Canadian Government and to foreign governments.<sup>8</sup> We also note that in the United States equivalent legislation, Section 1504 of the Dodd Frank Act (also known as the Cardin-Lugar Provision) awaits implementation. The US and Canada are similar to Australia in that they are home to many publicly listed extractive companies operating overseas. Australia adopting equivalent legislation would help level the playing field for the extractive sector and add considerable transparency and increase global anti-corruption efforts.

Some Australian extractive industries companies are required to publicly report all payments to governments (taxes, royalties, bonuses, fees and other payments) on a country-by-country, project-by-project basis as they are dual listed and covered under mandatory disclosure laws in the UK and Canada already.

However, we caution against the straight adoption of the EU's approach to CbC reporting. The EU Directive on disclosure of tax income<sup>9</sup> is problematic because mandated disaggregated disclosures are limited to operations in EU countries, and a limited number of 'non-cooperative' tax jurisdictions. The current list of non-cooperative jurisdictions includes only eight jurisdictions. Information on other non-EU countries will only be available on an aggregated global basis. The approach to public CbC ultimately adopted by the EU excludes most global jurisdictions and, by definition, is not on a country-by-country basis.

We note that separate legislation exists in the EU requiring extractive industry sector CbC reporting. This legislation requires extractive industry companies to disclose payments to governments and by project,<sup>10</sup> in addition to disclosures that might be required by the tax CbC legislation. This includes disclosure of taxes, royalties, licence fees and production entitlements.

**5. If the EU CbC approach was mandated in Australia, are there additional tax disclosures that MNEs should be required to report, such as related party expenses, intangible assets, deferred tax and effective tax rate (ETR) per jurisdiction?**

Instead of adopting the EU CbC approach (or a modified version of that approach) PWYP Australia strongly recommends using relevant Global Reporting Initiative (GRI) standards.

**6. Should the GRI tax standard be used as a basis for Australia to mandate MNE public CbC reporting? If so, why?**

**a) What sorts of entities (based on revenue or entity structure) should this mandate apply to?**

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<sup>8</sup> Government of Canada (2014), *Extractive Sector Transparency Measures Act*. Accessed: <https://laws-lois.justice.gc.ca/eng/acts/E-22.7/FullText.html>

<sup>9</sup> EU Commission (2021), *Directive (EU) 2021/2101 of the European Parliament and of the council*, accessed: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2021:429:FULL&from=EN>

<sup>10</sup> EU Commission (2014), *Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings*, accessed: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0034>

**b) Please provide details of any compliance costs associated with adopting the GRI tax standard approach to public CbC reporting.**

PWYP Australia supports using the GRI standards as a basis for mandating CbC reporting. We note that the GRI standards are widely supported and have been developed following consultation with a range of stakeholders across business, investors, unions and civil society. The GRI standards are the global reporting norm with many MNEs already using the GRI standards to report on a range of issues.

The GRI tax standard (GRI 207) provides a standardised reporting format, which facilitates easy analysis of the data within sectors and between companies. Reports can be easily compared and understood in context.<sup>11</sup> In addition to thematic standards – which includes the standard on tax – the GRI has developed sector specific standards, including for the coal sector (GRI 12)<sup>12</sup> and oil and gas (GRI 11)<sup>13</sup>. These sector specific standards include requirements for CbC PbP reporting aligned with the mandatory payment disclosures laws for extractives already in place in the UK, 27 EU nations, Canada, Norway, Switzerland and, soon, the US.

We note the GRI tax standard includes requirements for CbC reporting including revenues from third-party sales and intra-group transactions with other tax jurisdictions, and corporate taxes paid. Further, the GRI standards for the coal, and oil and gas sectors recommend reporting of payments to governments by project for a number of revenue streams (including production entitlements, royalties and dividends). These standards refer to the definition of a project as has been defined in the Extractive Industries Transparency Initiative (EITI) standards.

To summarise, the GRI tax standard should be the basis for MNE CbC reporting, with the GRI coal, and oil and gas standards applied to the extractive industries sector to require PbP reporting. There may be merit in requiring additional disclosures from other sectors, and we note that the GRI is developing other sector specific standards.<sup>14</sup>

**Extractive Industries Transparency Initiative**

The Extractive Industry Transparency Initiative (EITI) is the gold standard for domestic resources governance and anti-corruption. The EITI Standard promotes the open and accountable management of oil, gas and mineral resources. The EITI assists countries to gain the maximum benefit from their resource wealth by promoting structures for open and accountable management of natural resource revenues through a multi-stakeholder approach consisting of government, industry and civil society. There are currently 52 countries implementing the initiative. In the Asia-Pacific region several of our most important strategic partners are EITI compliant, including Indonesia, PNG and Philippines.

Australia committed to pilot the EITI in 2011 but despite the previous government committing to fully implement the initiative this has not yet occurred. There is strong industry and civil society support for Australia implementing the EITI. There are 24 EITI supporting companies operating in Australia including BHP, BP, Chevron, Woodside Energy, ExxonMobil and Rio Tinto Ltd. The Minerals Council is also supportive of the EITI.

<sup>11</sup> GRI (2019), *GRI 207 Tax Standard*, accessed: <https://www.globalreporting.org/search/?query=GRI+207>

<sup>12</sup> GRI (2022), *GRI 12 Sector Standard for Coal*, accessed: <https://www.globalreporting.org/standards/standards-development/sector-standard-for-coal/>

<sup>13</sup> GRI (2021), *GRI 11 Sector Standard for Oil and Gas*, accessed: <https://www.globalreporting.org/standards/standards-development/sector-standard-for-oil-and-gas/>

PWYP Australia strongly encourages the Government to implement the EITI domestically and considers this an important compliment to its proposed tax integrity and transparency initiative, including legislating CbC reporting.

**8. Would legislating the Tax Transparency Code to include CbC reporting provide a suitable basis for a mandatory transparency reporting framework? If so, why?**

**a) What sorts of entities (based on revenue or entity structure) should this mandate apply to?**

**b) Please provide details of any compliance costs associated with adopting the Tax Transparency Code for public CbC reporting.**

PWYP Australia does not believe that the Tax Transparency Code provides a suitable or credible basis for a mandatory transparency reporting framework, even if additional tax disclosures are required. Recent academic research has found that the Tax Transparency Code has not provided robust, verifiable or comparable information where MNEs have reported under the Code.<sup>15</sup> For example, it was noted that “companies are clearly not going to insert into disclosure reports red flags such as describing transactions with related parties in tax havens or details of the financial arrangements they have routed through low tax jurisdictions. The clarity or opacity of text in tax transparency reports is therefore unlikely to make any difference to their ability to raise public awareness of corporate tax practices”. The Code does not have a standardised reporting format, and few MNEs (including the extractives sector) use it.

PWYP research in 2020 assessing the top ASX listed 20 mining, oil and gas found that companies submitting TTC reports directly to the ATO decreased from 67% in 2016/17 to 47% in 2018/19.<sup>16</sup> Furthermore, the ATO does not verify the data and there is no requirement for the data to be open, accessible, and useful format.

**10. How should entities be required to publicly report their CbC information? Would publication in their annual report be adequate? Should this CbC data be verifiable (via independent audit, certification letter from CFO, reconcilable with financial accounts etc)?**

Publication of CbC information in annual reports should be encouraged. The CbC data could be included in an Annex to annual reports to make it easier for MNEs to then submit CbC data to a central repository (see question 11).

CbC reports should be independently audited (as do annual financial statements) or MNE board members or CFO required to personally guarantee the report is correct. Without this, the data in the reports may not be trusted by the community or it may be wholly or partially incorrect. Both of these scenarios would undermine public confidence in the MNE tax transparency system.

<sup>15</sup> Dr. Krever, R., Sadiq, K., McCredie, B., (2021), *The effectiveness of voluntary corporate tax disclosures: an Australian case study*, accessed: [https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0007/3918346/21\\_08\\_04-Voluntary-Tax-Disclosures.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0007/3918346/21_08_04-Voluntary-Tax-Disclosures.pdf)

<sup>16</sup> PWYP, (2020), *Leaders or Laggards? Tax and revenue transparency on Australia's top ASX listed mining, oil and gas companies*,

Government, most likely through the Australian Tax Office, should verify consistency between current CbC reporting under OECD BEPS Action 13 and CbC reporting under the GRI standard.

### **11. What role should Government play in reviewing, publishing and aggregated analysis of country-by-country data?**

Government should have a role in reviewing, publishing and aggregated analysis of MNE CbC data. Government can help build trust in MNE reporting by ensuring that only reports that are consistent with GRI standards are published. Such a review of MNE tax reports prior to publication will help ensure these reports are readable and comparable.

Maintaining a centralised, searchable and publicly accessible repository of MNE CbC reports will help ensure reports are accessible. Without a centralised repository, the benefits of mandating MNE tax reporting may not be fully realised because many reports will be hard to find. The Government's Modern Slavery Register is an example of how a centralised repository could work in practice.<sup>17</sup> The register is searchable. The register also contains some useful headline figures on reports submitted, including that over 1 million searches of the register have been performed (pointing the value of the register itself).

Significantly, the Natural Resources Department in Canada is developing a new data portal to make disclosures from their extractives sector more open and accessible for stakeholders.<sup>18</sup>

### **13. Should the data be reported in a standardised template? What should this be?**

Mandating use of GRI standards will ensure consistent reporting by MNEs.

### **14. When should mandatory tax transparency reports fall due? For example, should they occur at the same time as annual reports are produced, tax returns lodged, or be staggered to spread compliance burdens?**

Tax transparency reports should be published the same time that MNE annual reports are published.

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<sup>17</sup> See more on the Modern Slavery Register here: <https://modernslaveryregister.gov.au>

<sup>18</sup> The Government of Canada plans to update and improve its data portal in 2023. See current data here: <https://www.nrcan.gc.ca/our-natural-resources/minerals-mining/extractive-sector-transparency-measures-act/18180>