



BROKE:

Coal Mining Giant Games Global Tax System
... the World Loses



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Introduction

The global corporate tax regime is under review. It has long been recognised that many multinationals organise global operations to maximise operational and cost advantages, including tax treatment. Aggressive tax avoidance diverts revenue from government budgets that could be used to fund essential services, including public health and education. Corporate tax revenue is now needed more than ever in the wake of the ongoing health and economic impacts of a global pandemic.

Recent discussions within multilateral organisations such as the United Nations (UN) and the Organisation for Economic Cooperation and Development (OECD), as well as policy statements from the United States' President, promise a new approach to global corporate tax. This is a welcome shift at the global policy level, which has the potential to yield hundreds of billions of additional tax revenues.

But the proposals currently under discussion are critically flawed.

First the proposed design for the global minimum tax rate does not provide for an equitable distribution between jurisdictions. Nations across the global south, which already attempt to enforce high tax rates, will not be able to collect as much revenue as rich countries from the new mechanism.

A second fundamental flaw is the very limited ambition for the so called "Pillar One" of the OECD proposals. Whilst this reform was initially intended to better tax undertaxed corporations, the vast bulk of firms will in fact not have to change their practices. Yet, there are plenty of examples of aggressive tax avoidance that extracts desperately-needed funding from public budgets.

A longer term reform of the international tax architecture is necessary. Unitary tax and formulary apportionment arrangements, which already operate in some federated nation states, specify that corporate income taxes should be paid in every jurisdiction where value is created. Unitary taxation is necessary to generate fair public funding outcomes.

There are specific considerations regarding the application of unitary taxation in the extractives industry, including how corporate income tax interacts with other levies in the extractives industry.¹ Experience under existing forms of unitary taxation in both the United States (US) and Canada demonstrate the potential benefits of applying unitary taxation in the extractives sector. Worldwide combined reporting will provide better information for designing effective tax regimes based on the true costs and benefits of mining operations, and apportionment of tax revenues based on various criteria for value creation including sales and employment. The unitary approach in the extractive sector will eliminate profit shifting due to marketing schemes, related party interest payments and other forms of transfer pricing that may be prevalent.

This report exposes the critical need for fundamental global tax reform. The mining giant Glencore is a prime example of how complex transnational corporate structures facilitate profit shifting to reduce tax obligations. Glencore now reports global payments to governments as is required by law in the United Kingdom.² Notably, the company claims that these reports satisfy requirements for public country-by-country reporting, though they do not meet the Global Reporting Initiative's standards. These reports show that Australia, the world's largest exporter of coal, typically accounts for 25-40% of Glencore's total payments to governments.

Our research here shows that Australia is at the heart of Glencore's global tax avoidance empire.

Glencore's use of transfer (mis)pricing, the core feature of the current global tax system, is second to none. Its use of Singapore as a marketing hub was replaced by Switzerland, which functions as a global commodity trading centre for Glencore and others. Glencore has shifted debt from global mining acquisitions to avoid vast amounts of tax in Australia. Glencore's use of shell companies in the UK, Bermuda and Jersey – both British protectorates – has also helped deprive governments throughout Africa, Latin America and Asia of vast amounts of tax revenues. These practices may be lawful, but in our view they are unethical and the law should be changed to protect public services and ensure tax is fairly levied. Glencore was informed in advance about the publication of this report, and provided with relevant details, in order to facilitate their response: www.cictar.org/glencore-response

Unitary taxation, much simpler in design, more transparent and easier for all governments to enforce, is crucial to delivering public funding to the places where profits are genuinely earned. A unitary tax deals effectively with transfer (mis)pricing while current proposals fall short.

Every sector should be covered by global tax reforms and far greater transparency is required on not only production, but trading revenues as well.

Transfer pricing creates a risk of tax avoidance and is defined by the OECD as follows:

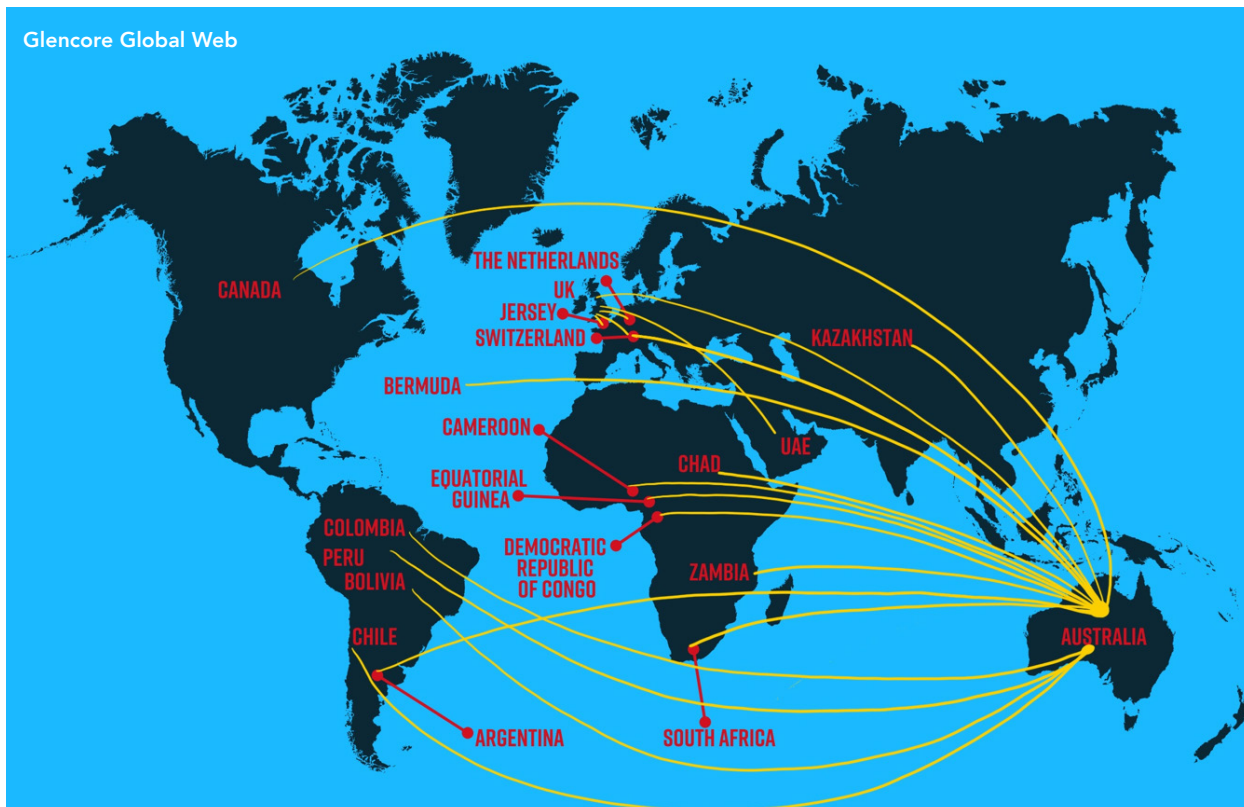
“the price charged by a company for goods, services or intangible property to a subsidiary or other related company. Abusive transfer pricing occurs when income and expenses are improperly allocated for the purpose of reducing taxable income.”

Source: OECD, Glossary of Tax Terms

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Shifty Business: How Glencore is depriving local communities through profit shifting



This report details Glencore's complex transnational corporate structure, which seems to facilitate shifting profits around the world to reduce the company's tax obligations. The report surveys instances where Glencore has been found to have avoided taxes or is involved in legal disputes over its tax practices. The report also reviews a recent purchase by Glencore of a troubled coal mine in Colombia, which may be an avenue to construct a new debt-based tax shelter for future earnings in Australia.

Major extractive firms including Glencore rely on a range of claims about contributions to resource-rich communities, to defend the exploitation of those resources. Chief among them is a claim that extractive activities contribute to economic

growth and support local communities to enjoy high standards of living through royalties and tax payments.³ To what extent can these claims be relied upon?

Glencore now reports global payments to governments (including taxation, royalties and other fees) under requirements in United Kingdom (UK) law for mandatory disclosure by all extractive companies with a significant UK presence. (Glencore is a public company listed on the London Stock Exchange). These reports show that Australia typically accounts for 25-40% of Glencore's total payments to governments. In the past three years, Australia received between two and three times more than any other nation state from Glencore. Between 2017 and 2020,

Kazakhstan, Peru, Chile, South Africa, Colombia and the Democratic Republic of Congo, together with Australia, have accounted for over 90% of all of Glencore's payments to governments.⁴

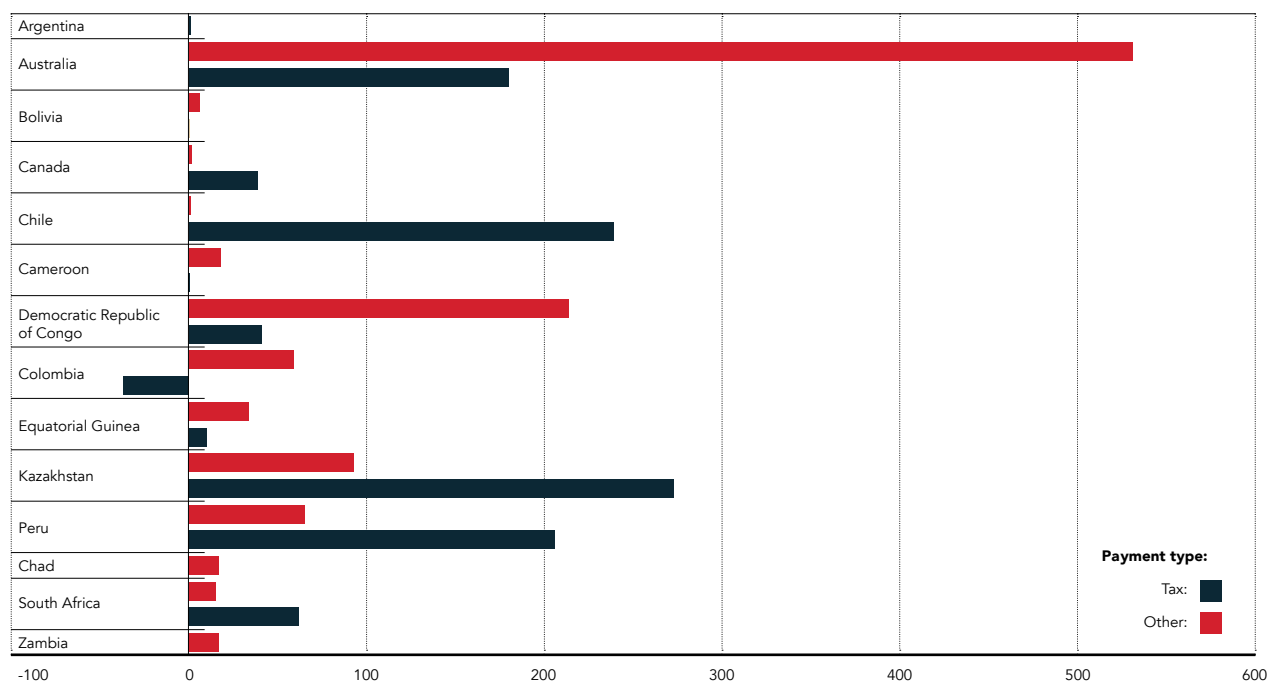
The remaining countries where Glencore operates including Argentina, Bolivia, Zambia, Chad, Cameroon, Canada, and Equatorial Guinea typically receive 1% or less of Glencore's payments to governments. In some jurisdictions, Glencore has even accrued massive tax credits which can offset future tax payments. In 2020, the company booked tax credits of nearly US\$38 million in Colombia.⁵ These figures suggest that many communities receive almost nothing in exchange for allowing Glencore to extract their resources and trade them globally for significant profits, shifted to other jurisdictions.

Australia appears to be at the core of many of Glencore's global tax avoidance schemes.

Glencore seems to have avoided its tax obligations in Australia over many years. Given this, the fact that the company's current payments to Australian governments are relatively large, suggests that other nation states get a very raw deal indeed. While the size of Glencore's operations in different jurisdictions may also impact the size of these payments, there is limited transparency on country-by-country revenues and production.

The graph below shows Glencore's payments to governments in 2020. The scale of the royalty payments reflects the relative production volumes in Australia. Notably, Glencore paid virtually nothing in income taxes in Australia between 2013 and 2018, despite these high production volumes and booking income in the billions.

Glencore's Payments to Governments 2020 (USD millions)



An analysis of public tax data from the earliest days of the Australian Taxation Office's (ATO) transparency project in 2013 shows that Glencore's primary corporate entity in Australia had **total income of nearly AU\$28 billion over a 3-year period (2013/14 – 2015/16) but paid zero in corporate income tax.**⁶ The 2016/17 data showed a small corporate income tax payment but maintained the overall pattern of aggressive tax avoidance.⁷ The ATO data differs from Glencore's own reporting due to different reporting periods and some minor variations on how total income and tax payable are counted. In recent years, Glencore's tax payments in Australia have jumped significantly, an apparent result of the exhaustion of debt-based tax shelters. While it is common for resource companies to incur large debts to begin production, this debt appears largely created from international investments rather than investment in Australian production.

A **tax shelter** is defined by the OECD as follows:

(1) An opportunity to use, quite legitimately, a relief or exemption from tax to pay less tax than one might otherwise have to pay in respect of similar activities, or the deferment of tax. (2) The polite term usually given to a contrived scheme to avoid or reduce a liability to taxation.

Source: OECD, Glossary of Tax Terms

During a 2015 Australian Senate Inquiry into Corporate Tax Avoidance, Glencore's tax schemes came under significant public scrutiny. At the time, Glencore used subsidiaries in Singapore as a marketing hub for the sale of Australian coal.⁸ **Glencore was able to sell Australian coal at low prices to its own offshore subsidiaries, making little or no profit and paying little or no tax in Australia.** Glencore's Singapore company had negotiated a special deal with the Singapore government to pay a 5% tax rate on the profits made from the sale of Australian coal in Singapore, but actual tax payments may have been even lower.⁹ **After these arrangements were exposed Glencore agreed to shut down the Singapore coal marketing hub.** However, what Glencore set up in its place may be even worse.

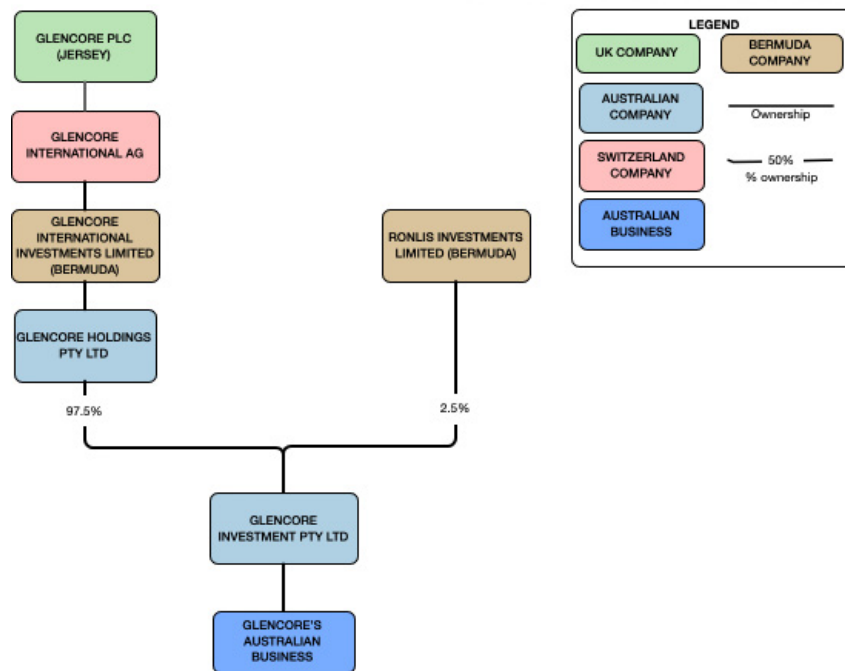
Glencore, the US\$42 billion commodities giant, is the world's largest thermal coal exporter and Australia is its largest source of coal. Coal made up roughly a third of EBITDA (Earnings Before Interest, Taxation, Depreciation, and Amortisation) for Glencore in 2020.¹⁰ EBITDA is used by many, including Glencore, as a better measure of operational performance than profit, which is impacted by many non-operational factors. Analysts argue that "high margins have made [coal] a reliable cash generator."¹¹

Glencore now appears to sell the majority of Australian coal to a Swiss subsidiary.¹²

While Singapore is a financial and trading centre and physically in between Australia and many Asian markets where coal is purchased, this is absolutely not the case with Switzerland. Switzerland is landlocked and not a significant consumer of coal. There is very little chance that Australian coal ever gets anywhere close to Switzerland. However, this arrangement appears to allow Glencore to book profits from Australian coal in Switzerland where, according to corporate reports, little or no tax is paid.

Glencore's complex corporate structure: A case study in tax avoidance

Glencore Australia Corporate Structure



Information sourced from ASIC and company documents.
All ownership relationships 100% unless described. Note that voting rights do not necessarily reflect equity interest.

Glencore plc is traded on the London Stock Exchange, incorporated in Jersey, headquartered in Switzerland and has subsidiaries in other tax havens all over the world, including Bermuda. Most of the firm's extractive activities are organised through a chain of subsidiaries, incorporated in Australia and Bermuda.

Glencore's global corporate structure appears designed to reduce tax payments. As revealed in the Paradise Papers leak, **Glencore was the largest client of the Appleby law firm in Bermuda where Appleby had a whole room dedicated to serving Glencore, including organisation of its global tax avoidance schemes.** The leaked documents from Appleby showed that Glencore was trying to simplify the incredibly complex corporate structure of its Australian business. Notably, the Australian

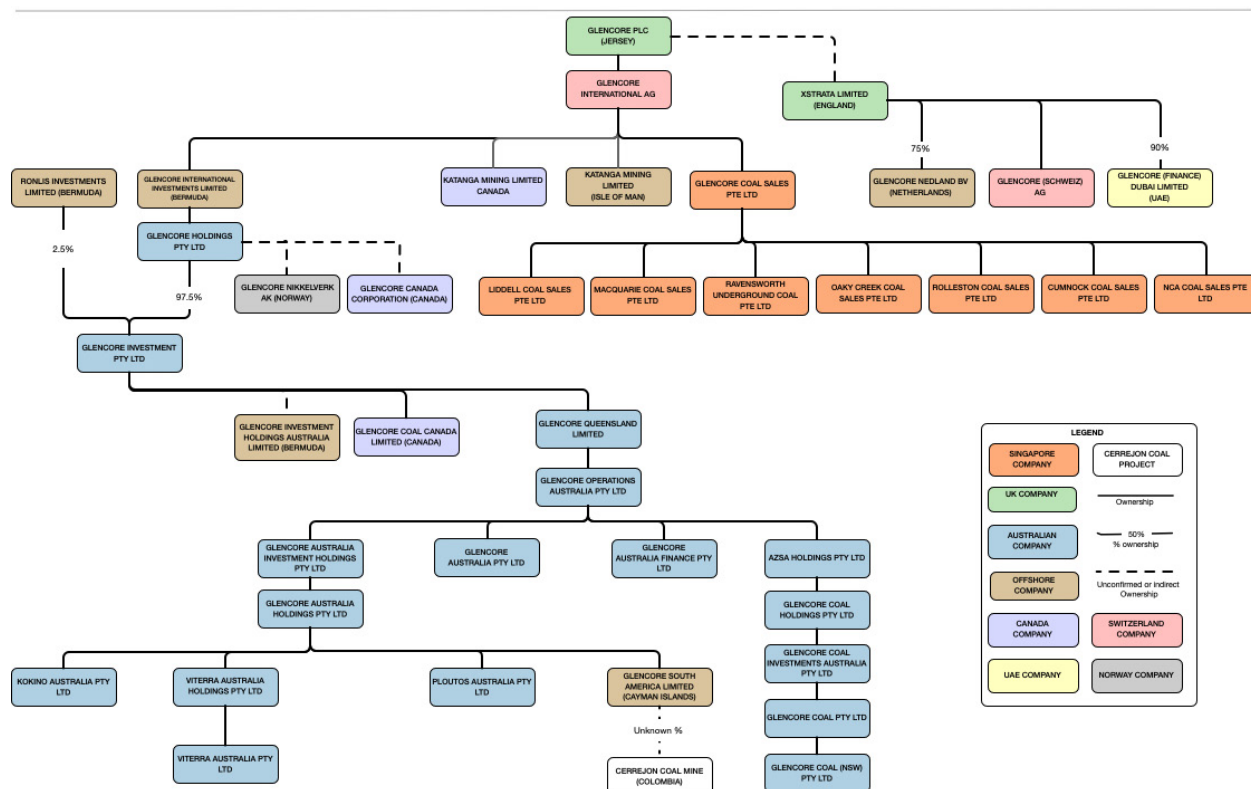
business plays a key role in Glencore's global operations. **Ownership of Glencore's global business through Australia allowed the company to transfer debts to Australia that helped the company lower taxable income in Australia where its operations were highly profitable, and to channel profits to entities in other jurisdictions.**¹³

Glencore Investments Pty Ltd (GIPL) owns most of the other Glencore companies operating in Australia and is the head of the consolidated tax group in Australia. GIPL is owned through two entities registered and incorporated in Bermuda. Glencore International Investments Limited, registered in Bermuda, owns Glencore Holdings Pty Ltd (GHPL) which owns 97.5% of GIPL. The remaining 2.5% is owned by Ronlis Limited, also incorporated in Bermuda.¹⁴

While GHPL has a registered office in Sydney, its principal place of business is at a London address.¹⁵

The chart on the following page shows how its Australian operations are integrated into Glencore's global structure. The entire global corporate structure is too complex to represent in a single chart of this nature.

Ownership of Glencore Australia

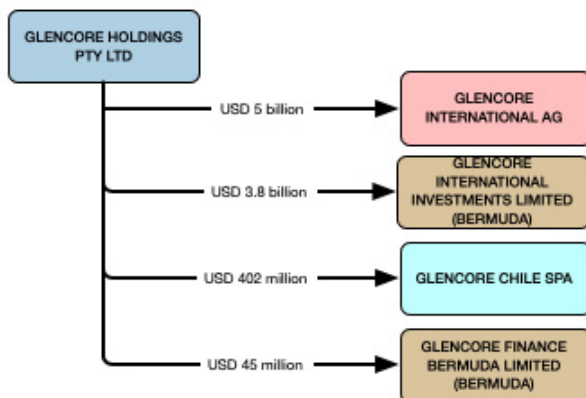


Information sourced from ASIC, UK Companies House, the Accounting and Corporate Regulatory Authority of Singapore, and company documents.

Offshore Related Party Loans

At 31 December 2020, GHPL had loans to related parties of nearly US\$9.3 billion, of which US\$3.8 billion was to its Bermuda parent company, Glencore International Investments Limited.¹⁶ Over US\$5 billion was lent to Glencore International AG, based in Switzerland and the number one trading partner of Glencore's Australian business¹⁷ Over \$402 million was lent to Glencore Chile SpA.¹⁸

Glencore has issued loans totalling USD 9.3 billion to related party entities in Bermuda, Switzerland and Chile



GHPL also had "interest bearing related party liabilities" of US\$11.8 billion with interest rates on loans ranging from LIBOR plus 1.9% and fixed rate loans from 2% to 8.7%,¹⁹ and a further US\$130 million in other borrowings from related parties.²⁰ These loans from related parties resulted in **interest expense of US\$170 million** paid to "Other related parties" in 2020.²¹ Interest income from loans to Glencore International AG, "Other related parties" and Associates was US\$128 million in 2020.²² These "Other related parties" are not identified.

While there was a **net outflow of interest payments of US\$42 million from Australia**, the massive volume of offshore lending and borrowing – combined with the ability to

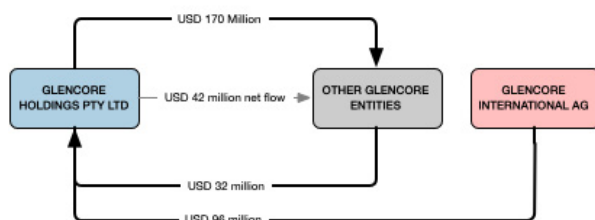
manipulate the timing of payments and the rates of interest – create a level of complexity that obscures potentially much greater profit shifting out of Australia. While related party lending in multinational structures can be a legitimate function, the level of complexity and the volume of Glencore's offshore related party transactions are **hard to justify and raise serious concerns about profit shifting**. However, it is hard for tax authorities, without access to internal company transactions and with a plethora of legal loopholes, to properly establish the true nature of a company's conduct.

In addition to the assets owned by GHPL through its 97.5% ownership of Glencore Investments Pty Ltd, it directly owned a range of other global operations. These include a copper production company in the United States, a nickel production company in Norway and several "operating and finance" companies in Canada as well as interests in other Canadian mining companies.²³ Until recently, GHPL held the Cerrejón coal mine in Columbia, through a series of subsidiaries including GIPL, Glencore Coal South America Limited, and Glencore South America Limited.²⁴ (This asset was disposed of through a share issue to another Glencore related party, diluting GHPL's stake from 100% to 2%.²⁵) *Why are these assets of a global mining and commodity trading giant – incorporated in Jersey and headquartered in Switzerland – owned through an Australian company which is in turn owned through Bermuda and the UK?*

While Australia appears to be a central hub for channelling funds throughout Glencore's global extractive operation, the company's complex webs of related party transactions extend further. Glencore's mining interests in the Democratic Republic of Congo, for example, are owned via Canada through Katanga Mining Limited. Katanga was listed on the Toronto Stock Exchange until mid-2020, and also owns various financing and operating companies linked to the DRC assets, which are listed in Guernsey and the Isle of Man.²⁶ Katanga Mining Limited is owned

by Glencore plc through its subsidiary Glencore International AG²⁷ (see below regarding some recent corporate governance issues associated with Glencore's management of Katanga Mining).

Glencore Australia paid a net amount of \$42m USD in interest payments to offshore related parties and associates. Glencore received \$128m USD in interest income in 2020 and paid \$170m USD in interest payments.



Zero Tax in UK and Switzerland via Bermuda and Australia: Xstrata Limited

Glencore plc's subsidiary, Xstrata Limited, registered in the United Kingdom, indirectly owns Glencore's Australian business holdings through its effective ownership of GHPL, GIPL, Ronlis Limited and Glencore International Investments Limited.²⁸ Xstrata Limited also indirectly owns Glencore International Investments Limited and Ronlis Limited in Bermuda, which directly own the Australian holding companies.²⁹ Xstrata Limited owns more than a dozen other Bermuda companies, including Glencore Investment Holdings Australia Limited, which may relate to Glencore's Australian operations.³⁰ (see above Chart: Ownership of Glencore Australia).

Until 2019, Xstrata Limited directly owned 90% of Glencore Coal Sales Pte Ltd in Singapore, the former marketing company for Australian coal sales, which is listed as an operating company. This 90% stake was sold to another entity in the

Glencore group during 2019.³¹ The Singapore coal marketing companies directly linked to individual Australian coal mines were also indirectly 100% owned by Xstrata Limited.³²

Other directly owned companies of Xstrata Limited include Glencore (Schweiz) AG, another Swiss holding company, and Glencore (Finance) Dubai Limited (90%) in the United Arab Emirates and Glencore (Nederland) BV (75%) in the Netherlands, both finance companies.³³ The primary purpose of Glencore's complex global structure, using a multitude of tax havens, appears to be minimising global tax payments.

Xstrata Limited had a current tax charge of zero for the four years between 2016 and 2019.³⁴ The Note on Taxation from all three financial reports from 2017 to 2019 stated that the company "is incorporated in the UK but by virtue of its place of effective management being in Switzerland it is tax resident in Switzerland."³⁵

The Note further explains that the company "can benefit from the holding privilege at the Cantonal level and therefore the Company is exempt from corporate income taxes. The Company is only subject to Federal corporate income tax at an effective rate of 7.8%. Due to the fact that the Company has a tax loss carry-forward, no Federal corporate income tax is due."³⁶ The **incorporation in Jersey, the headquarters in Switzerland and the complex web of entities in global tax havens** apparently serve a purpose, as explicitly stated in the corporate accounts.

Tax Havens, Transfer Pricing & Marketing Hubs: Glencore's tax avoidance toolbox

Glencore has a long history of controversy regarding its tax conduct, as evidenced by many disputes with tax authorities, scrutiny from governments, NGOs and multilateral governance bodies, and the company's apparently unfulfilled promises to clean up its transfer pricing misbehaviour.

Guilty of tax avoidance in Zambia

In late 2020, after more than a decade of national and international legal battles with Glencore and its subsidiary, the Supreme Court of Zambia delivered a judgment against Mopani Copper Mines (MCM).³⁷ The company was found liable for abusing transfer pricing rules and fined US\$13 million.

MCM was 90% owned by Glencore and had been the subject of a tax audit in 2009. The audit found "financial and accounting manipulations" including inflated operating costs, reporting low volumes of production, and selling copper to related parties at below market rates, in violation of the arms-length principle.³⁸ The audit found that MCM's operating costs were over US\$380 million higher than the auditing team could justify, leading to lower profits and undermining the tax base for the Zambian Government.³⁹

This audit became the basis of the Zambia Revenue Authority's (ZRA) struggles with Glencore, as well as several international complaints including one via a dispute mechanism within the OECD. In 2011, just prior to Glencore's float on the London Stock

Exchange, a complaint was lodged by five non-government organisations, alleging that Glencore's manipulation of its accounts reduced Glencore's taxable income in Zambia by hundreds of millions of US dollars between 2003–2008.⁴⁰ That complaint remains unresolved, as the state parties "agreed to disagree" with Glencore on the substantive issues.⁴¹

The European Investment Bank, which loaned US\$50 million to MCM, also launched an investigation into the company's tax compliance. The EIB was accused by a number of NGOs of suppressing the results of the investigation.⁴² An investigation by the European Ombudsman found that the EIB had breached its own rules on transparency by failing to publish comprehensive results of its investigation.⁴³

In January 2021, following the judgment in Zambia, Glencore announced that it had sold its 90% stake in the Mopani mine to ZCCM Investments Holding plc, the owner of the 10% stake.⁴⁴ ZCCM is a publicly listed company but shares are overwhelmingly held by various Zambian government controlled entities.⁴⁵

Allegations of corruption

Whilst Glencore is an “official supporter” of the Extractive Industries Transparency Initiative (EITI) established to address corruption risks, the multinational’s global tentacles have seen it involved in numerous allegations of corruption and bribery around the world.

In 2021, Anthony Stimler, a former Glencore trader pleaded guilty to paying millions in bribes to officials in Nigeria, through intermediaries in Cyprus and Switzerland, and with co-conspirators based in the UK, France and elsewhere. The bribes allowed Glencore to secure contracts for more lucrative grades of oil from the Nigerian National Petroleum Corporation on a more favourable delivery schedule.⁴⁶ Glencore has distanced itself from this conduct and claims to have put in place remedial measures.⁴⁷

Prior to its 2020 delisting in Toronto, Glencore subsidiary Katanga Mining Ltd was in dispute with Canadian authorities, which claimed that Glencore and Katanga were “hiding the risks of doing business in the DRC”.⁴⁸ This was settled in 2018 with CA\$22 million paid to Ontario authorities, and several personal penalties for directors. The investigation into Katanga’s conduct, similar to investigations into Glencore’s operations in Zambia and Nigeria, included manipulation of corporate accounts and risks of bribery and corruption. In mid-2020, the Swiss Attorney General also announced that it would investigate Glencore’s operations in the DRC, following investigations already announced by the UK and the USA, subsequent to the Paradise Papers leak.

The release of the Paradise Papers showed that in 2009, Glencore gave a secret US\$45 million loan to Israeli mining billionaire Dan Gertler after it enlisted him to secure a controversial mining agreement in the Democratic Republic of the Congo (DRC). US officials accused, and ultimately sanctioned, Gertler in relation to having “amassed his fortune through hundreds of millions of dollars” worth of opaque and corrupt mining and oil deals in the DRC.⁴⁹

Forced to Disclose Tax Haven Ties

In 2015, an Australian Senate Inquiry into Corporate Tax Avoidance asked Glencore to disclose foreign subsidiaries of the Australian group that were incorporated in secrecy jurisdictions. Glencore reported that at the end of 2014, it had **11 subsidiaries in Bermuda, two in the Cayman Islands and one each in the British Virgin Islands, Cyprus and Mauritius.**⁵⁰ However, Glencore **failed to report that the Australian business was owned through Bermuda or the nature of the relationships with the subsidiaries in Bermuda or other tax havens.** This could be interpreted as a direct attempt to mislead the Australian Parliament and a failure to disclose all of the information that was requested.

Dozens of other subsidiaries of the Australian business were reported in Argentina (4), Brazil (2), Canada (33), Chile (11), China (3), Columbia, Dominican Republic (2), Hong Kong, Ireland, Mauritania (3), Mongolia, New Zealand, Norway, Papua New Guinea, Peru (6), Philippines (5), Republic of Congo, Singapore, South Africa, Tanzania (2), Turkey, the UK (3) and the USA.⁵¹ Despite the public scrutiny, the links of Glencore's Australian business to tax havens and a range of global business operations continue. Glencore has stated its intention to reduce the use of tax havens, but there is little evidence that this has occurred in relation to Australian operations.⁵² Ownership of global assets via Australia, weaving in and out of various tax havens, continues to be a core component of an incredibly complex and opaque global corporate structure.

Singapore Marketing Hubs for Australian Coal

The 2015 Senate Inquiry into Corporate Tax Avoidance also revealed that Glencore was using a Singapore marketing hub to sell Australian coal. **This allowed Glencore to sell coal from Australia to its own subsidiary in Singapore.** Transfer pricing allowed Glencore to shift profits on the mining and export of Australian coal out of Australia – where they would have been taxed at the 30% corporate tax rate – to Singapore where they were taxed at 5% or less. The Singapore coal marketing companies were outside of the Australian corporate structure and owned directly by Xstrata Limited in the UK.

Virtually all of the income for Glencore Coal Sales Pte Ltd in Singapore came from dividends of subsidiary companies which were incorporated in Singapore but linked to individual Australian coal mines. Three of the subsidiaries were related to coal mines in Queensland, the Newlands mine, the Oaky Creek mine and the Rolleston mine and four subsidiaries were related to Glencore coal mines in New South Wales.⁵³

In response to a direct question from the Senate Inquiry into Corporate Tax Avoidance, Glencore stated that the coal marketing hub in Singapore, between its establishment in 2011 and through 2014, had pre-tax profits of "US\$630 million on a consolidated basis of which Glencore's share was US\$482m. ...Tax paid in relation to these profits totalled US\$20m on a consolidated basis of which Glencore's share is US\$16m... The Singaporean marketing companies are subject to a 5% corporate tax rate in Singapore."⁵⁴ If these profits from Australian coal mines owned and/or managed by Glencore had been taxed at the Australian corporate tax rate, it would have produced US\$189 million (AU\$276 million) in Australian tax revenues instead of US\$20 million in Singapore over the four-year period.

The corporate tax rate in Singapore is 17%, but Glencore negotiated a concessionary tax rate of only 5%. However, the effective tax rates for the whole Singapore coal marketing business and for Glencore's share were only 3.2% and 3.3%, respectively. Glencore told the Senate Inquiry in 2015 that since the acquisition of Xstrata in 2013, "Glencore has integrated the coal marketing function into its global coal marketing business and is in the process of closing the Singapore coal marketing office. Going forward coal sales contracts will be directly between Glencore's coal companies in Australia and end customers."⁵⁵

Recent filings for Glencore Coal Sales Pte Ltd state that the company "has ceased its coal trading operations and is now dormant" and that management "intends to liquidate the Company upon fulfilment of the conditions set forth by the tax authorities."⁵⁶ Nonetheless, in 2018 the company reported an income tax "benefit" that boosted profits to over US\$7.6 million,⁵⁷ and paid

out dividends of US\$31 million to Xstrata Limited in the UK.⁵⁸ Dividend income is generally not taxable. This dividend income, presumably from profits earned on historical Australian coal sales, has now been transferred from Singapore to the UK to Switzerland without being taxed along the way. The dividends likely represent the end of the pattern of tax-free transfers on profits from the sale of Australian coal which helped to reduce or eliminate tax payments in Australia where the coal mining actually occurred.



Switching to Switzerland: Now Glencore Australia's largest trading partner

Glencore filings in Singapore reveal that the company has attempted to close the Singapore coal marketing hub or shift Australian coal marketing operation to another company.⁵⁹ It appears that the coal marketing function has been shifted into Glencore's global business structure and is now marketed largely through Switzerland instead of Singapore. Glencore's Swiss company, the primary trading partner of the Australian business, is not the "end user" of Australian coal exports.

Trade figures⁶⁰ (see below) reported by Glencore Investments Pty Ltd (GIPL) reveal that Glencore International AG (GIAG), its related party in Switzerland, is by far its largest single trading partner.

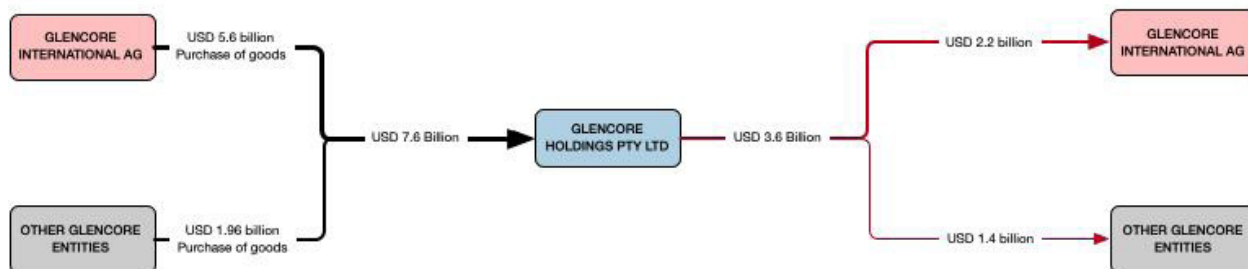
	2020 (\$Bn)	2019 (\$Bn)
GIPL coal revenue	US\$5.4	US\$8.6
GIPL total revenue	US\$10,260	US\$14,416
Coal as % of total GIPL revenue	52%	58%
Sales from GIPL to GIAG	US\$4.6	US\$6.37
Sales from GIPL to 3 rd parties in Asia ⁶¹	US\$3.6	US\$4.8
Sales from GIPL to 3 rd parties in Oceania ⁶²	US\$1.76	US\$3.8
Sales from GIPL to GIAG, as % of all GIPL sales	45%	44%

These numbers do not take into account the price at which related party sales may have been conducted. With copper sales from Australia to the same Swiss entity, **the sales price was lowered by 23% or more, compared to third party sales. The volume of goods sold through Switzerland could be significantly larger than the revenue amounts above.** Given that Glencore's coal exports from Australia are the largest in the world, the potential impact on shifting profits is enormous.

The organisation of Glencore's production activities, trading activities and related party transactions implies that much of its coal is marketed through Switzerland. The question is how much? What impact would this have on tax revenues in Australia? The Australian Tax Office (ATO) sought an additional AU\$73 million in tax payments from Glencore's copper exports from 2007 to 2009.⁶³ If Glencore has replaced its Singapore coal marketing hub with a similar Swiss marketing scheme, how much might be owed in additional tax payments?

Not only was **the Swiss entity the largest customer of Glencore's Australian business**, at the end of 2020, the Australian company had provided over **US\$1.4 billion in current and non-current loans** to the same Swiss entity.⁶⁴ Glencore's top Australian entity also **paid the Swiss entity almost US\$1 billion for goods and services** and **had US\$442 million in receivables due**.⁶⁵ These large related party transactions can be an additional tool for transfer pricing to shift profits out of Australia.

Related Party Transactions in 2020 for Glencore Holdings showing purchase and sale of goods



Related Party Transactions in 2020 for Glencore Investment Pty Ltd showing purchase and sale of goods



At the end of 2020, **Glencore Australia owed a total of over US\$5.2 billion in interest bearing debts to related parties with floating interest rates of LIBOR plus a margin of up to 2% or fixed rates between 8.1% and 10.9%.**⁶⁶ **Total interest payments to related parties in 2020 amounted to US\$253 million.**⁶⁷ Money flowing in both directions between and among related parties can be difficult for tax authorities to effectively audit.

While Glencore's current offshore related party debt and interest payments from Australia are substantial, they are significantly reduced from the multinational's well documented history of using interest payments to reduce tax liabilities in Australia.⁶⁸ In recent years, the ATO has been cracking down on multinationals using high interest rates on offshore related party debt to artificially reduce taxable profits and therefore, tax payments in Australia. Unfortunately, the ATO has recently experienced a setback in the courts on transfer pricing. The winner of that case? Glencore.

Broken laws: Missed opportunity to review transfer pricing

Australia is at the heart of Glencore's global tax avoidance empire. The operation relies heavily on transfer pricing rules in Australia that permit Glencore (and other multinational firms) to trade between their subsidiaries in different jurisdictions on terms that support their preferred tax arrangements.

The Australia High Court recently had an opportunity to review this system but declined and ruled in favour of Glencore, rejecting the ATO's recent guidelines on transfer pricing.

Australia's Commissioner of Taxation brought an AU\$92 million case against Glencore, which disputed the legality of the company's transfer pricing arrangements for copper sales between related parties.⁶⁹ The ATO argued that Glencore's mark up on its copper sales to a related party in Switzerland was higher than the company could have commanded on the open market. The Federal Court disagreed, finding that Glencore's transfer pricing arrangements met the standards for "arms-length" transactions.⁷⁰ The OECD's arms-length principle states that "transactions should be valued as if they had been carried out between unrelated parties, each acting in his own best interest".⁷¹ The Federal Court decision, which was accepted by the High Court, adopted an approach that favoured Glencore.⁷²

Michael Kobetsky, a tax law professor contrasted the Glencore decision with a 2017 case decided against Chevron,⁷³ in which that company was found liable for AU\$340 million in unpaid taxes. Since the *Chevron* case, the ATO has issued several guidelines explaining transfer pricing rules and has made transfer pricing a focus area for enforcement. The new transfer pricing guidelines were estimated by the government to raise an additional AU\$10 billion over a decade, largely from the resource sector. While some argue that the *Glencore* decision throws doubt on the government's interpretation of transfer pricing rules⁷⁴, the ATO views the impact of the *Glencore* case as limited.⁷⁵

Though the full implications of the decision are yet to be seen, Kobetsky says that the High Court missed an opportunity to provide clearer guidance.⁷⁶ Transfer pricing, which is better seen "as an art and not a science", remains subject to the "substantial uncertainty"⁷⁷ that the arm's-length principle generates.

Debt Shelters: Reducing Tax, Increasing Profits

Glencore structures its global mining operations via Australia and Bermuda. Global debt financing arrangements appear to have reduced the company's tax obligations in Australia for many years. At the end of 2015, Glencore Investment Pty Ltd had AU\$2 billion in accumulated revenue tax losses.⁷⁸ This debt and accumulated revenue loss largely related to Glencore's 2013 acquisition of Xstrata. At the time, Xstrata was one of the top 20 listed companies on the London Stock Exchange and already majority owned by Glencore.

Much of this global debt, held through Australian companies, sheltered Glencore from Australian tax payments over several years. However, by the end of 2019 this debt had been repaid. As of 31 December 2019, Glencore claimed that there were no carried forward losses in Australian accounts that related to Glencore's operations outside Australia.⁷⁹

The recent increase in tax payments in Australia by Glencore also suggests that some of the company's tax credits and shelters have been exhausted. Since FY18, Glencore's tax payments in Australia have increased significantly after years of no tax payments despite vast production and exports of Australian resources, primarily coal. After paying AU\$1,000 tax in FY17, Glencore Investment Pty Ltd paid AU\$239.8 million in FY18 and AU\$813.7 million in FY19.

Meanwhile, Glencore recently engaged in a somewhat baffling purchase of the troubled Cerrejón mine in Colombia. Will this new debt replace the exhausted Xstrata debt as a new tax shelter for Australian coal production?



Buying up troubled assets: Cerrejón acquisition

Despite writing off over half the value of its share in the Cerrejón mine in Colombia during FY20, at a cost of US\$445 million (net of taxes at US\$211 million),⁸⁰ Glencore has purchased the two-thirds stake held by its investment partners: Anglo American and BHP. As with other international mining operations, Glencore's existing stake in Columbia's Cerrejón coal mine is owned through the Australian corporate structure.

Cerrejón, Latin America's largest open pit mine,⁸¹ was jointly held by Glencore along with BHP and Anglo American, until Glencore acquired the other two thirds shareholdings for US\$294 million each.⁸² The deal completes Anglo's divestment of its coal assets and contributes to BHP's on-going divestment program.⁸³

The timing of the deal appears to have been arranged to maximise the tax and financial reporting benefits for the relevant parties. The sale occurred in mid-2021, but has been backdated to December 2020, with the completion date pushed forward to the first half of 2022.⁸⁴ This means that the US\$80 million loss that BHP incurs on its assets will not be recorded in the financial accounts until FY22. Pushing the date forwards also means that

Glencore will get the benefit of higher thermal coal prices in 2021, and an expected jump in demand of 4.5%.⁸⁵ This could reduce the amount of cash it will outlay for the deal to US\$230 million.⁸⁶

Given Glencore's greenhouse gas emission reduction targets and commitments to reduce to net zero by 2050, the Cerrejón acquisition has caused ripples in the climate movement. It remains unclear how Glencore will meet the commitments it has made, particularly given that it says it will run its mines to closure, unlike some of its competitors who are looking to offload assets.

Aside from the climate and emissions controversy, Cerrejón is subject to many human rights claims. In 2020, three months of industrial action closed the Cerrejón mine, contributing to losses in production and revenue.⁸⁷ While this action concluded in a collective agreement, disputes continue, with workers claiming that the employer has engaged in draconian management practices.⁸⁸

In early 2021, parallel complaints were filed with the OECD National Contact Points in Australia, Ireland, Switzerland and the United Kingdom.⁸⁹ These complaints, as well as a statement by several UN Special Rapporteurs, have called for the mine's closure pending an investigation of environmental destruction and human rights abuse.⁹⁰ The Global Legal Action Network (GLAN), working with a coalition of Colombian and international organisations, cites pollution, poor water quality, and forced evictions as some of the key drivers of its complaints. The Colombian Constitutional Court has found that people living near the mine show high levels of harmful metals in their blood.⁹¹ In September 2020, several UN special rapporteurs on health, human rights, and environment called for a suspension of the mine's operations based on harm to the health of the Wayuu, Colombia's largest Indigenous group.⁹² This is the latest iteration of long-standing community opposition to the Cerrejón mine.⁹³

Why did Glencore spend over a billion dollars on this troubled asset?

Glencore presents itself as an unlikely climate hero in the Cerrejón transaction. While BHP and Anglo have divested, Glencore says it has taken control of the mine so as not to compromise its “sustainable operating philosophy”.⁹⁴

This is a questionable defence, given the sustained local and international pressure on this mine from human rights, environmental and workers’ organisations. It also leaves open the question of why Glencore bought out its partners on an asset that is burdened by conflict, and the increasingly pressing legal, political and economic risks of stranded fossil fuel assets.

Does the Cerrejón purchase create a useful tax break in Australia for a multinational under continuing domestic scrutiny for aggressive tax avoidance? Is Glencore’s use of Australia as a centralised hub for its related party transactions providing a tax shelter for its largest global production? Glencore’s global extractive operations appear to be organised and channelled via its holdings in Australia.

Australian resources, and perhaps other international mining production and exports, are distributed and sold via Glencore’s trading operations in Switzerland. Trading income is not currently covered by any reporting requirements in Switzerland or elsewhere. Glencore is not the only commodities trader to shift trading income to Switzerland. Switzerland operates as a tax haven and secrecy jurisdiction, and is a global commodities trading centre for both mining and agricultural products.

Over the last few years, the ATO’s corporate tax transparency data shows that Glencore’s tax payments have risen from almost nothing to over AU\$800 million in FY19. The Cerrejón purchase has been carefully structured, with a backdated acquisition date, and a long period before completion, possibly to meet the creative accounting needs of the firms involved. *Does this US\$588 expenditure create a debt-based tax shelter for Glencore? Will this new debt, from an international acquisition, replace previous debt and reduce future tax payments in Australia on the world’s largest export volume of coal?*

How much has Glencore's tax avoidance cost Australian treasuries?

Tax avoidance practices by Glencore appear to have cost the Australian treasury hundreds of millions of dollars. In a response to Questions on Notice from the 2015 Senate Inquiry into Corporate Tax Avoidance, Glencore reported 2014 and 2013 figures that reveal the long-term nature of Glencore's tax avoidance in Australia. Total company tax payments were only AU\$77 million in 2014 and AU\$100 million in 2013.⁹⁵ These tax payments were on total revenue of US\$12.8 billion in 2014 and US\$14.5 billion in 2013, which remarkably resulted in a loss, for Australian tax purposes, in 2014 and a profit of only US\$441 million in 2013.⁹⁶ In both years, the vast majority of sales – over 70% - were to related parties, not including additional billions in other related party transactions.⁹⁷ All of these forms of transfer pricing almost certainly helped reduce taxable income and tax paid in Australia, which may have been lawful, but in our view, was unethical.

If these figures had represented economic reality, Glencore would have had little motivation to continue to invest in an expansion of coal operations in Australia, as the company has done. Glencore's "Inferred Coal Resources" are dominated by coal assets in Australia, with 9 Megatonnes (Mt) in Queensland and 7.6 Mt in New South Wales.⁹⁸ This makes up nearly 93% of Glencore's total global coal resources. While Glencore makes vast profits, the returns to the Australian community are extremely limited.

Given that Glencore's earnings on Australian coal have likely been over US\$10 billion on net revenues of over US\$24 billion from 2016 to 2018, the use of a Swiss marketing hub could have had a massive impact on tax revenues paid by Glencore in Australia. A comparable discount on coal sales to that used on copper would have shifted around US\$1 billion in profits to Switzerland. That **profit shift would have resulted in US\$345 million, over half a billion Australian dollars, in lost tax revenue.**

It is possible that more than half of the Australian coal is marketed through Switzerland or that the discount is higher resulting in even greater losses in tax revenue in Australia from Glencore. When the largest producer of the largest export commodity uses aggressive tax avoidance schemes, it has huge consequences on the ability of the government to fund schools, hospitals, infrastructure and other essential public services.

Conclusion

A close critique of Glencore's operations reveals a company that extracts not only ecological resources like coal and copper, but that also strips out the economic stability and financial viability of the communities in which it operates. Glencore is a case study in the shadowy practices of tax avoidance that undermine the interests of workers and states, and that threaten quality public services.

These are precisely the challenges that current global efforts at tax reform must address. It is well-understood that the global tax regime is failing. While states scramble to find the economic resources to support their populations in fighting the covid-19 pandemic, a handful of very wealthy people become wealthier and wealthier by the second. Reform is essential to support recovery from the pandemic, to build back stronger public services, and to prepare to adapt and mitigate in the face of catastrophic climate change.

But these tax reform efforts will be for nothing if they barely affect the profits of some of the most impactful economic actors. Glencore's practices of shifting profits from one jurisdiction to another show clearly that new tax rules must be based on a unitary taxation regime, which would treat multinationals as single entities with a coherent global business and tax strategy throughout complex structures in multiple jurisdictions. To be fair between countries, such unitary tax reform must introduce allocation factors that genuinely reflect all factors of value creation, including sales and employment.

Establishing a global unitary tax system for multinationals is essential to end the use of global transfer pricing rules to unethically reduce tax payments, to overcome the failed "arm's length" principle, and end the shifting of profits from where they are produced to where they are taxed the least or not at all. While progress towards a global unitary tax system may take time, there are several immediate steps that must be taken.

Recommendations

Governments

Switzerland is one of the most important locations worldwide for headquarters of multinational corporations. This study shows that it is not enough for such a country to simply follow new OECD rules if it wants to contribute to a fairer global corporate tax system, further steps must be taken at national, regional and global levels.

Australia is a major contributor to the global extractives economy and its policies on corporate tax and transparency are central to the effective governance of the global resource sector.

We recommend that Switzerland, Australia and all other governments

- **implement the global minimum tax** under the Pillar Two reforms in the OECD's Inclusive Framework, with an annual review on the impact of tax revenues.
- take the initiative to **improve the concept of the global minimum tax** of the current OECD reform project in such a way that it also benefits the countries of the South, including lifting the current 15% floor over time. Furthermore, all governments should work within the UN with the goal to replace the current global transfer pricing system with a **new global unitary taxation** system with appropriate apportionment.
- introduce a **public country-by-country reporting** system similar to the one already existing in the European Union (EU), but including disaggregated information for each country, not just EU member states. This will make it clear and comprehensible what taxes multinationals should pay, and where, based on the distribution of global profits and production.

- amend their taxation policies in order to prevent **artificial debt loading**. In Australia, there are some restrictions on what is referred to as "thin capitalisation", but not enough. Debt-to-equity ratios, in Australia and elsewhere, should be limited to a multinational's worldwide average. This would prevent excessive and artificial offshore debt from being abused to minimise corporate income tax payments.
- following best practices for corporate governance, with respect to **professional services advisors**, all governments should introduce legislation to prevent the use of the same firm to provide both tax advice and auditing services to the same client, in order to avoid conflicts of interest.

In addition, the **Australian Government** specifically should

- implement **mandatory disclosure** laws, in line with laws already in place in the UK, 27 EU nations, Canada, Norway, Switzerland and soon the US, for all extractive companies that either operate in Australia or Australian extractive companies operating internationally;
- **become an Extractive Industries Transparency Initiative (EITI) implementing country**. The Australian government has promoted and supported adoption of EITI globally, but has failed to implement EITI in Australia despite a successful pilot in 2015, and support from industry associations and many extractive companies.

Glencore

For Glencore we recommend an **immediate separation of auditing and tax advisory services** and the **implementation of the GRI Tax Standard**, which includes public country by country reporting, in all future annual reports.

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