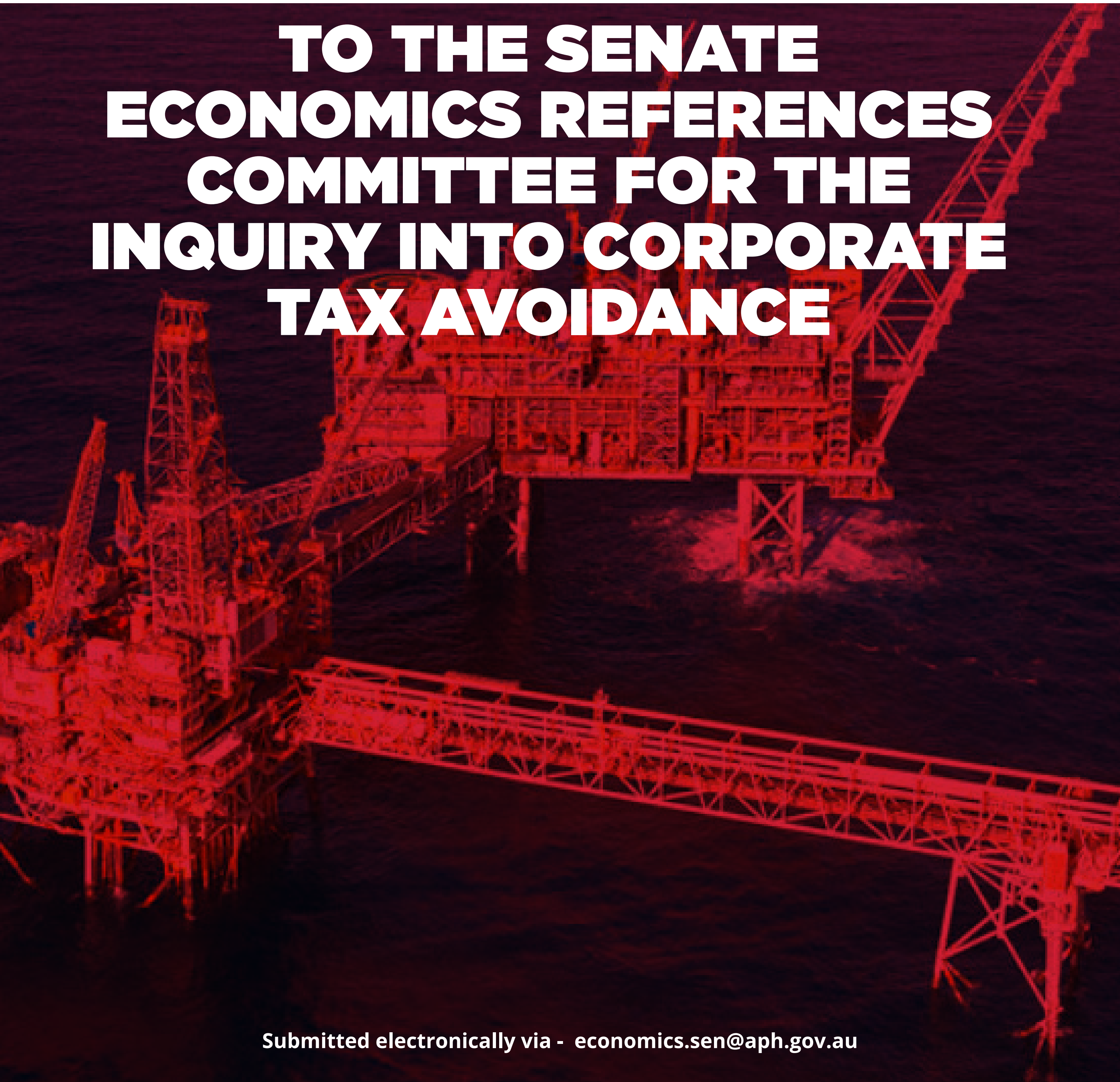
TO:
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

9 February 2018

JOINT SUBMISSION OF THE TAX JUSTICE NETWORK – AUSTRALIA (TJN) AND THE MAKE EXXON PAY COALITION

TO THE SENATE ECONOMICS REFERENCES COMMITTEE FOR THE INQUIRY INTO CORPORATE TAX AVOIDANCE



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THE CLEAR CONCLUSION OF OUR RESEARCH IS THAT EXXON’S AGGRESSIVE TAX AVOIDANCE IS NOT UNIQUE TO AUSTRALIA BUT A CORE PART OF THE OIL GIANT’S GLOBAL PRACTICES. BY ALLOWING EXXON’S CONDUCT IN AUSTRALIA TO CONTINUE, AUSTRALIAN AUTHORITIES ARE CONTRIBUTING TO EXXON’S GLOBAL TAX AVOIDANCE.

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Thank you for the opportunity to make this submission with regards to the tax affairs of ExxonMobil Australia Pty Ltd ("Exxon") and related companies. This submission supplements and supports the previous TJN submission *"Is Exxon Paying a Fair Share of Tax in Australia?"*. This submission provides some new and deeper information on Exxon's tax affairs in Australia; examines Exxon Australia's tax practices in Papua New Guinea (PNG); and examines Exxon's global tax practices, including in New Zealand, the UK, and Exxon's global web of tax haven subsidiaries.

Exxon in Australia operates and owns significant oil and gas operations. Exxon supplies fuel and motor products to dozens of 7-Eleven service stations across the country.

The clear conclusion of our research is that Exxon's aggressive tax avoidance is not unique to Australia but a core part of the oil giant's global practices. By allowing Exxon's conduct in Australia to continue, Australian authorities are contributing to Exxon's global tax avoidance.

We strongly support the efforts of this committee to shed light on the aggressive tax minimisation practices of major corporations operating in Australia. Missing out on billions of corporate income tax revenue deprives our schools, hospitals, infrastructure and other public services of adequate funding. These public services improve our nation's productivity, business climate and the quality of life for all Australians. Every Australian has the right to a share of the wealth generated from the natural resources Exxon and other corporations exploit on our behalf.

We acknowledge the work of the Australian Tax Office (ATO) and the significant focus it has given to aggressive tax practices of multinationals operating in Australia's offshore oil and gas industry since 2013. While significant progress has been made, most notably with the Chevron court case and resulting guidelines on offshore related party debt, we believe there is still significant work yet to be done by both the ATO and through new legislation in order to guarantee that Australians get a fair share from the exploitation of our finite natural resources. Recommended legislative changes are mentioned here and discussed in more detail in previous TJN submissions to this inquiry.

As Exxon's gas operations contribute to a significant proportion of Australia's domestic gas supply, the issue of its corporate tax avoidance has become increasingly pertinent among a public frustrated by rising energy and gas costs. Customers facing these high prices are demanding to know where the windfall profits are going to.

Virtually every other country in the world has policies in place to guarantee energy security and stable and affordable energy supply. Australia now finds itself dependent on a tax-dodging, price-gouging foreign multinational corporation.

In this environment, there are major economic and security implications beyond the scope of this inquiry. Exxon is the largest foreign multinational supplying the domestic gas market and benefits from escalating domestic prices.

UPDATE AND RECAP OF PREVIOUS SUBMISSION/REPORT

The previous submission was written immediately prior to the third year of corporate tax data being released by the ATO. As was widely reported in the media, that data confirmed that Exxon has not paid one cent in corporate income tax in the last **three** years on total income in Australia of nearly $25 billion over the three-year period. Exxon is in the top tier of all companies operating in Australia. Therefore, aggressive tax practices by Exxon would have a large impact.

As outlined in the previous report, the primary Exxon subsidiary in Australia, ExxonMobil Australia Pty Ltd is immediately owned by another Exxon subsidiary in the Netherlands (ExxonMobil Australia Holdings B.V.), which is immediately owned by another Exxon subsidiary in the Bahamas (ExxonMobil Asia Pacific Holding Limited).

Exxon, as with other major oil corporations, was specifically asked by this committee to "comment on the relationship between ... Australian operations and associated operations in foreign jurisdictions" and in "particular, ... asked to provide information" on:

a) How operations in Australia relate to any operations in foreign jurisdictions, either directly or through a parent company;

(b) How many subsidiaries either ExxonMobil Australia or its parent company have that are related to Australian operations, and where those subsidiaries are located; and

(c) The value of transfers between those related operations for each year over five years by jurisdiction, and an explanation of the flows of money between these subsidiaries and the Australian operations.[1]

Exxon clearly failed to answer the committee's questions by not mentioning the direct ownership relations through the Netherlands and the Bahamas. Why is that? Why was Exxon trying to conceal this information and mislead the Australian Parliament? What are the consequences for this?

There are other connections to the Australian operations in foreign jurisdictions that were also not disclosed in Exxon's response to the committee on 18 November 2015.

"Exxon clearly failed to answer the committee's questions by not mentioning the direct ownership relations through the Netherlands and the Bahamas. Why was Exxon trying to conceal this ...and mislead the Australian Parliament?"

1. These are quotes and a paraphrasing of the questions which were asked of Shell Australia Pty Ltd and repeated in their submission (#119) dated 29 July 2015 to the committee. It is worth noting that Shell did provide detailed information in response to these questions.

EXXON'S PNG OPERATIONS OWNED IN AUSTRALIA HAVE DEEP LINKS TO BAHAMAS

Exxon has another company incorporated in Australia, called Mobil PNG Gas Holdings Pty Ltd, which is not a subsidiary of ExxonMobil Australia Pty Ltd as are most of other Australian subsidiaries.[2] Two of the 3 directors of this company, including ExxonMobil Australia Chairman Richard Owen, are also directors of and senior executives in ExxonMobil Australia Pty Ltd.[3] According to the 2016 financial report of Mobil PNG Gas Pty Ltd, the "entity's principal activities during the year were associated with the exploration, extraction, conversion and transportation of petroleum and natural gas in Papua New Guinea."[4] This Australian company is owned by Exxon Overseas Investment Corporation in Delaware, USA; and it owns ExxonMobil PNG Limited -the primary Exxon subsidiary in PNG- and several other subsidiaries incorporated in PNG.[5]

"This use of this Bahamas-based entity is very likely to reduce taxable profit in PNG and Australia and book profit in the Bahamas were the corporate income tax rate is zero."

Both the Delaware parent, and the primary PNG subsidiary, are disclosed as material subsidiaries in Exxon's global 2016 10K (annual report) filed with U.S. Securities and Exchange Commission, but not the Australian intermediary company.[6] Interestingly, neither the Netherlands nor the Bahamas companies which own the Australian operations are disclosed.[7] However, ExxonMobil Australia Pty Ltd, along with four of its Australian subsidiaries, are disclosed.[8] A 33.2 per cent interest in another Bahamas subsidiary with connections to PNG, "Papua New Guinea Liquefied Natural Gas Global Company LDC" is also disclosed in Exxon's SEC filing.[9] D

Little information about this Bahamas-based entity is contained in the 2016 financial report of Mobil PNG Gas Pty Ltd filed with ASIC, but other sources explain the purpose of this entity and allow for the information in the ASIC file to be interpreted. The ASIC file shows current liabilities (loans) to this company of US$304 million and non-current liabilities of US$3,426 million ($3.4 billion).[10]

A company based in PNG but listed in Australia, Oil Search Limited, is a partner in the Exxon operated PNG project. Oil Search has a 29 per cent interest in this Bahamas entity and explains the purpose of the company as follows:

"Papua New Guinea Liquefied Natural Gas Global Company LDC, a limited duration company incorporated under the laws of the Commonwealth of the Bahamas (the "Borrower") was organised to conduct certain activities of the PNG LNG Project outside of PNG, including the borrowing and on-lending to the Project participants of the Project Finance Debt Facility, and the purchase and re-sale of PNG LNG Project liquids and LNG. The Borrower is owned by each Project participant in a percentage equal to its interest in the PNG LNG Project...

The liquids and LNG sales proceeds from the PNG LNG Project are received into a sales escrow account from which agreed expenditure obligations and debt servicing are firstly made and, subject to meeting certain debt service cover ratio tests, surpluses are distributed to the Project participants."[11]

This use of this Bahamas-based entity is very likely to reduce taxable profit in PNG and Australia and book profit in the Bahamas were

2. Mobil PNG Gas Holdings Pty Ltd, Annual Report For the Year Ended 31 December 2016. (obtained from ASIC)
3. Ibid, p.1, Directors' Report.
4. Ibid.
5. Ibid, p.26, Note 21, Related party disclosures & p.28, Note 22, Subsidiaries.
6. See Exhibit 21 in the attached excel file. Source information is provided in the file.
7. Ibid.
8. Ibid.
9. Ibid.
10. Mobil PNG Gas Holdings Pty Ltd, Annual Report For the Year Ended 31 December 2016, p.22, Note 15, Borrowings.
11. Oil Search Limited, Annual Report 2016, p.130, Note 25, Subsidiaries and Interests in Joint Arrangements; p.135, Note 26, Financial and Capital Risk Management. http://www.oilsearch.com/__data/assets/pdf_file/0016/7045/HC_OSF_AR16_Interactive_v01A.pdf

the corporate income tax rate is zero. The use of marketing hubs in Singapore by Exxon and others has been a major issue for the ATO. The marketing of LNG from PNG to Asia customers from the Bahamas is on a whole different scale.

Two Japanese utility companies (TEPCO (now JERA) and Osaka Gas) announced long term sales contracts for large volumes of LNG from the PNG LNG project and identified the Bahamas-based Papua New Guinea Liquefied Natural Gas Global Company LDC as the seller.[12]

The Australian Exxon entity, Mobil PNG Gas Holdings Pty Ltd, reported revenue of US$983 million in 2016 and profit after tax of US$104 million.[13] A number of significant items dramatically reduce the reported profits. These included US$180 million in a share buyback from the parent company in Delaware; US$56 million in dividends to the Delaware parent; finance expenses of US$194 million (presumably paid mostly to the Bahamas entity); and "recognised a tax expense" of [US]$52 million".[14] The income taxes paid from the cash flow statement were only US$7 million and "Government and other royalties were only US$1 million.[15] (More on this below)

According to the ATO corporate tax data, Mobil PNG Gas Holdings (unlike ExxonMobil Australia Pty Ltd), has paid corporate income tax in Australia for the last two years, but was not on the 2013-14 ATO list. According to the ATO data, in the 2015-16 fiscal year, the company had over $902 million in total income and paid less than $123,000 in Australian corporate income tax. In 2014-15, the company had $152 million in total income and paid less than $38,000 in tax.

According to ExxonMobil Corporation's 2016 Financial and Operating Review, the company has a 33 per cent interest and is the operator of the PNG LNG project which "recently reached production equivalent of 8.3 million tonnes per year, a 20-percent increase over the facility's original capacity. To date, the project has safely produced more than 19 million tonnes of LNG and loaded 262 cargoes for delivery to customers in Asia."[16] ExxonMobil Corporation reports earnings from Australia and PNG as US$300 million in 2016, this suggests that about 1/3 of profits may have come from PNG and 2/3 from Australia.[17]

To put the PNG LNG project in context, the Chevron operated Gorgon project -in which Exxon also has a 25 per cent interest- is the largest resource project in Australia's history and has an annual production capacity of 15.6 million tonnes of LNG per year.[18] The PNG LNG project is over half the size of the Gorgon project. The PNG LNG project is roughly double the size of Darwin LNG and Pluto, two other large offshore Australian LNG projects, and roughly equivalent to Queensland's Curtis Island LNG project.[19]

Oil Search Limited's 2016 annual report provides greater insight into the PNG LNG project than any of Exxon's filings. Oil Search "delivered a

"In 2014-15 Exxon's total income was larger at $152 million, but taxable income dropped to $126,053, compared to the taxable income of Oil Search of $1.5 million on total income of $145 million. What explains these significant differences? Are Exxon's tax practices in Australia significantly more aggressive than Oil Search?"

12. http://www.tepco.co.jp/en/press/corp-com/release/09120701-e.html & https://www.osakagas.co.jp/en/whatsnew/1209740_11885.html
13. Mobil PNG Gas Holdings Pty Ltd, Annual Report For the Year Ended 31 December 2016, p.2, Director's Report.
14. Ibid, p.1-2, Directors' Report; p.5, Statement of Profit or Loss.
15. Ibid, p.8, Statement of Cash Flows.
16. ExxonMobil Corporation, 2016 Financial and Operating Review, p.47. http://cdn.exxonmobil.com/~/media/global/files/financial-review/2016_financial_and_operating_review.pdf
17. Ibid, p.46.
18. https://www.chevronaustralia.com/our-businesses/gorgon
19. https://www.appea.com.au/oil-gas-explained/operation/australian-lng-projects/

core profit of US$106.7 million, despite depressed global oil and gas prices".[20] The profit was derived from total revenue of US$1,236 million.[21] Over 77 per cent of total production was from Oil Search's 29 per cent interest in the PNG LNG project.[22] There are other production sites in PNG, including some in which Exxon also holds an interest.

According to the Oil Search 2016 annual report, PNG LNG has 4 primary customers under long term contracts that purchase the bulk of LNG from the project. These customers, Sinopec (China), Jera (Japan), Osaka Gas (Japan) and CPC (Taiwan) are also major purchasers of LNG from the Australian market.[23] Oil Search's revenue from its 29 per cent interest in the PNG LNG project from just these 4 customers was US$710.8 million in 2016.[24] This suggest that Exxon's 33.2 per cent interest would give it US$813.7 million in revenue from these 4 customers and that the total project revenue from these customers would be nearly US$2.5 billion in 2016 alone.[25] While this is clearly a profitable project for Exxon and its partners, it is not clear how much the people of PNG have benefitted, or will benefit without greater scrutiny of aggressive tax avoidance led by Exxon.

Oil Search reported debt on the PNG LNG project of over US$3.9 billion and repaid over US$289 million of this debt in 2016.[26] Despite Oil Search's smaller percentage ownership in the PNG partnership, the reported debt is a little larger than Exxon's (discussed above), but roughly in line.

According to the cash flow statement, Oil Search paid US$41.3 million in income tax and paid US$5.4 million in royalties and levies.[27] As mentioned above, Exxon paid only US$7 million in income taxes and US$1 million in royalties on its larger stake in the project. While there are many possible explanations, this is a huge difference in payments to the PNG government and other stakeholders. Are Exxon's tax practices in PNG significantly more aggressive than Oil Search, even though they use the same Bahamas structure?

Oil Search's Australian subsidiary, Papuan Oil Search Limited, is listed in the ATO's 2015-16 tax data with $163 million in total income and no taxable income or tax paid. In the 2014-15 data the company had $145 million in total income, taxable income of $1.5 million and paid $457,100 in corporate income tax in Australia. In the 2013-14 data, the company had $141 million in total income, $38 million in taxable income and paid over $11 million in corporate income tax. These numbers are very different from the Exxon numbers above. In particular, in 2014-15 Exxon's total income was larger at $152 million, but taxable income dropped to $126,053, compared to the taxable income of Oil Search of $1.5 million on total income of $145 million. What explains these significant differences? Are Exxon's tax practices in Australia significantly more aggressive than Oil Search?

Given the Australian ownership of Exxon's PNG operations, the impact of Exxon's tax practices in PNG should be thoroughly examined by Australian authorities. There is a major opportunity for the people of PNG to benefit from this massive project, but without greater scrutiny that may not happen. There are also implications here for Australian tax revenue. Australia should attempt to show greater leadership on this issue in the Asia-Pacific region, particularly with our closest neighbours in PNG, Indonesia and New Zealand.

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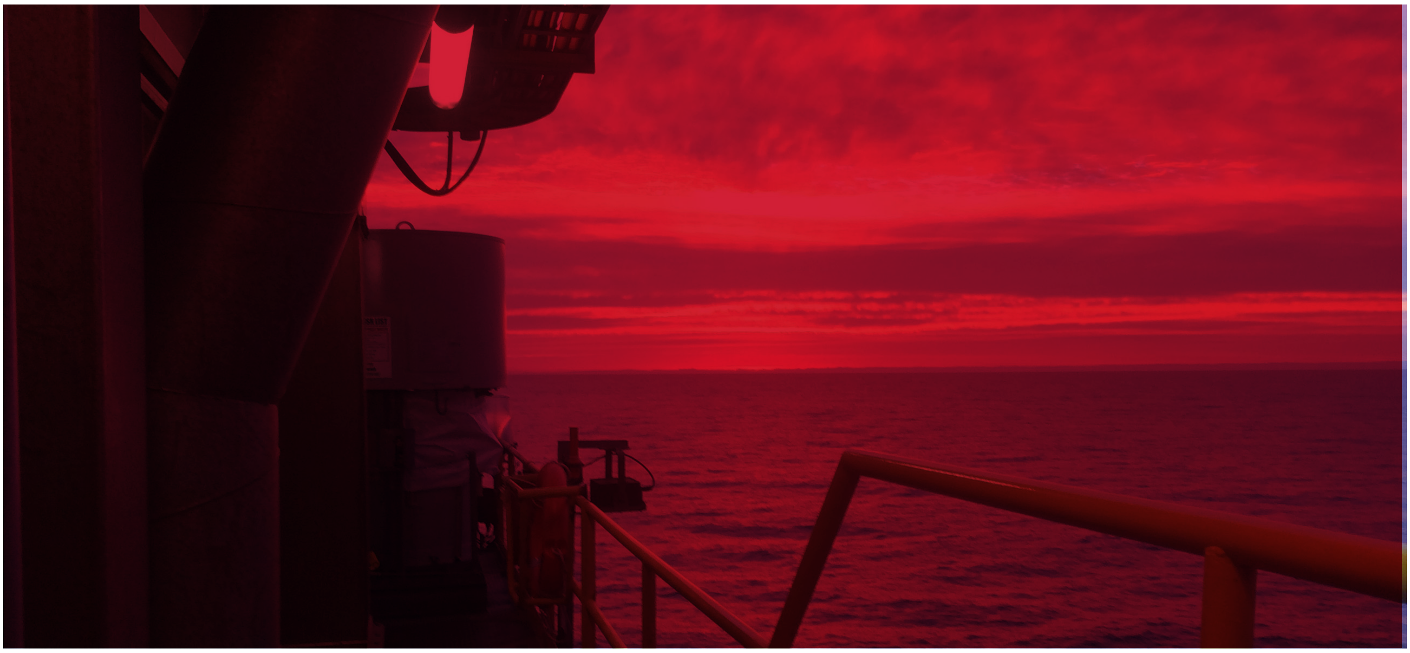
20. Oil Search Limited, Annual Report 2016, p.12, Letter from the Chairman.
21. Ibid, p.69.
22. Ibid, p.22.
23. Ibid, p.23; TEPCO's long term contract to purchase LNG from PNG was mentioned above. TEPCO (Tokyo Electric Power Company) and Chubu Electric joined together to create JERA, which is now one of the world's largest buyers of LNG. http://www.jera.co.jp/english/
24. Ibid, p.23.
25. Calculations based on percentage ownership.
26. Oil Search Limited, Annual Report 2016, pp.70-71.
27. Ibid, p. 109, 115.

EXXON'S NEW ZEALAND (TAX-FREE) OPERATIONS



No corporate income tax was paid by Exxon in New Zealand in 2016, despite major revenues from a large downstream (retail) business. Exxon is not currently involved in oil or gas production in New Zealand, but Mobil Oil New Zealand Limited is one of the country's oldest oil companies with a presence beginning in 1896 and is a leading supplier of fuel.[28] Exxon supplies a nationwide petrol station network of approximately 170 Mobil branded sites; including 121 Mobil owned or leased sites and supplies over 150 unbranded sites.[29] Additionally, Exxon operates storage terminals, a pipeline and has shares in a refinery and coastal shipping operations.[30]

Mobil Oil New Zealand Limited is a subsidiary of ExxonMobil New Zealand Holdings (EMNZH), the parent company for all New Zealand operations. This company was ranked by Deloitte as New Zealand's 14th largest company by revenue in 2016, down from 13th place in 2015.[31] The Deloitte ranking has two other large petrol retailers, BP New Zealand Holdings (#11) and Z Energy Ltd (#12), which had marginally higher revenues, but significantly higher after-tax profits.[32] Deloitte ranked BP #25 in profit and Z Energy #43 compared to EMNZH at #202.[33] Why is that? Poor management by Exxon or an intentional shifting of profits?

EMNZH is 100 per cent owned by Mobil Petroleum Company Inc., which was reported to have relocated from Texas to Delaware in 2017.[34] EMNZH has one Australian-based director who is also a director of a subsidiary of ExxonMobil Australia Pty Ltd.[35] The Australian Government should be concerned about any Australian citizens who may be engaged in facilitating corporate tax avoidance and depriving our neighbours of vital corporate tax income.

According to the 2016 annual financial statement of EMNZH, the group of companies had total revenues of NZ$2.2 billion, but after tax operating profit of only NZ$91 million.[36]

Eighty-seven percent of the sales revenue was composed of the cost of buying crude oil and other products (NZ$1,329 m) and sales tax and

28. http://corporate.exxonmobil.com/en/company/worldwide-operations/locations/new-zealand/about/business-overview
29. Ibid.
30. Ibid.
31. https://www.top200.co.nz/wp-content/uploads/Top-200-Awards-2016-Top-200-rankings.pdf
32. Ibid.
33. Ibid.
34. http://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/1846798/24574096/
35. http://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/1846798/24373412/
36. ExxonMobil New Zealand Holdings, Consolidated Financial Statements For the Year Ended 31 December 2016, p.1. https://app.companiesoffice.govt.nz/companies/app/service/services/documents/2A1F1BBF81D5DF1982D1B744EC502E7A
37. Ibid.

duties (NZ$607 m).[37] Despite assurances that these purchases were "based on independently and globally traded commodity pricing" about 94 per cent of purchases were from related parties.[38] The financial statement has no information on any of the related parties or where they may be located. For the purchase of crude and other products, it is very likely that the primary trading partner, as is the case in Australia, is ExxonMobil Asia Pacific Pte Ltd in Singapore. As discussed in the previous submission, this subsidiary is owned through another subsidiary in the Bahamas, has negotiated concessionary tax rates of 5 per cent and 10 per cent in Singapore (compared to NZ's 28 per cent and Singapore's 17 per cent) and may not have paid any corporate income tax in Singapore in 2016.

The taxable profits in New Zealand were further reduced by NZ$50 million in (tax free) dividends paid to the Delaware parent company and $26.3 million in interest payments to related parties.[39] The cash flow statement does not show any income tax payments. While there are tax expenses and expenses for deferred taxes, the notes to the financial statements have a "-" in the line for "current tax in respect of the current year" for both 2016 and 2015.[40] This appears to indicate that Exxon's corporate income tax payments in New Zealand are similar to those in Australia - non-existent.

The financial statements of Exxon New Zealand also indicate that the company had NZ$796.5 million in interest bearing loans with related parties.[41] In January 2017, after the end of the financial year, "the group finalised a review of its cash management facilities and repaid NZ$442 million of its existing long-term borrowings representing a halving of its long term intercompany debt levels. The group also entered into an enduring finance facility with a related party.... It is anticipated that these arrangements will be more cost effective by reducing the group's overall interest expense and will enable more efficient management of the group's financing requirements."[42] While this did not impact the 2016 year, it is very likely to eliminate any possible income tax liability in 2017 and drastically reduce governmental tax incomes in future years as well.

The final note to the financial statement reveals that the new financing facility is with ExxonMobil Keystone Finance Company.[43] This subsidiary is also incorporated in Delaware. (see attached list of Delaware subsidiaries)

The potential of lost tax revenue in New Zealand due to aggressive tax minimisation strategies is significant and should be investigated further. The ATO must begin work in cooperation with regional tax authorities, particularly in PNG, New Zealand, Indonesia and Singapore, to examine Exxon's corporate

"The ATO must begin work in cooperation with regional tax authorities, particularly in PNG, New Zealand, Indonesia and Singapore, to examine Exxon's corporate structure and how related party transactions and aggressive tax planning may be reducing corporate tax payments throughout the region."

38. Ibid, p.18, Note 5 Related Party Transactions states that there was $1,245.3 million in purchases of goods from related parties.
39. Ibid, p.6, Cash Flow Statement.
40. Ibid, p.17, Note 3, Income Tax Expense.
41. Ibid, p.18, Note 5, Related Party Transactions.
42. Ibid, p.1, Directors' Report.
43. Ibid, p.26, Note 23, Subsequent Events.

EXXON'S UK PRODUCTION: LESSONS FOR AUSTRALIA?

As recommended in the previous submission and discussed in detail in the submission by Publish What You Pay (PWYP) – Australia, Australia must immediately adopt mandatory disclosure of all payments to governments for large resource companies based in Australia or operating in Australia. This is already a policy position of the ALP and we encourage the government to engage in bi-partisan dialogue to implement mandatory disclosure as soon as possible. Canada, the EU and the UK already have mandatory disclosure laws in place. As a result of the UK's mandatory disclosure, we know exactly what income tax payments were made (or not made) by Exxon's UK operations on a project by project basis.

Even when required by law, Exxon appears to provide the least amount of disclosure as possible. It is worth noting that the information supplied by other companies to the UK government, including Exxon's partner Shell, and CNOOC (the Chinese-government controlled oil company that is now the UK's largest producer) are far more comprehensive than information supplied by Exxon. Clearly, ExxonMobil has a problem with transparency.

"Information supplied by other companies to the UK government, including Exxon's partner Shell, and CNOOC (the Chinese-government controlled oil company that is now the UK's largest producer) are far more comprehensive than information supplied by Exxon."

In 2016, Exxon's subsidiary Esso Exploration and Production UK Limited received net tax refunds for 3 projects from the UK tax authority (HMRC) totalling nearly GBP 161.6 million or AUD$283.7 million.[44] No other fees or payments were reported. A note explains that "net refunds result from the carry back of tax losses, resulting in a refund of taxes paid in prior years."[45]

While ExxonMobil is getting corporate income tax refunds from the UK government, the company has "interests in about 40 producing fields in the North Sea, principally through a joint venture with Shell. In 2016, average net production from these fields was 40 thousand barrels of liquids per day and 307 million cubic feet of gas per day."[46] According to the companies UK website, Exxon is responsible for "approximately five per cent of UK oil and gas production, supplying the UK and international markets with an average of 80,000 barrels of oil and 441 million cubic feet of gas a day."[47]

The primary driver of these tax refunds is likely to be the UK's incredibly generous fiscal regime for oil and gas production, rather than Exxon's aggressive tax planning. Unfortunately, there are similarities with Australia's fiscal policies for oil and gas production.

The United Kingdom and Australia share a problem: we are far too generous to the companies who deserve the least support from our governments. Despite continuing efforts by Exxon and other oil companies to lower applicable tax and royalty rates in the UK and Australia, both countries already have exceedingly generous fiscal regimes for oil and gas production.

The submission by Juan Carlos Boué of the Oxford Institute for Energy Studies provides a detailed explanation of these regimes.

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44. https://extractives.companieshouse.gov.uk/company/00207426 ; numbers converted using current exchange rate of 1GBP = 1.76AUD
45. Ibid.
46. ExxonMobil Corporation, 2016 Financial and Operating Review, p.35
47. http://www.exxonmobil.co.uk/en-gb/company/uk-operations/operations/overview?parentId=2b10eac0-2d5a-421b-b175-bd0e5709e965 ; accessed on 31 January 2018.
48. http://www.exxonmobil.co.uk/en-gb/company/uk-operations/refining-and-marketing/overview
49. Ibid.
50. http://www.exxonmobil.co.uk/en-gb/company/uk-operations/gpm/overview
51. https://www.sec.gov/Archives/edgar/data/34088/000003408817000017/Financial_Report.xlsx ; data in tab labelled, "Disclosures About Segments And Related Information (Schedule Of Geographic Sales And Other Operating Revenue)"

EXXON'S UK REVENUE: VANISHING DOWNSTREAM?

Exxon has large operations in the UK beyond its interests in North Sea oil and gas production. Exxon's UK website states that the company is "one of the largest petrol retailers in the UK… through our retail network of around 1,100 Esso-branded service stations." [48] Exxon also owns and operates the UK's largest refinery which "processes some 270,000 barrels of crude oil a day and provides around 20 per cent of the UK's refining capacity."[49] Exxon also claims that it's UK-based marketing business "is the world's largest non-government marketer of natural gas" and that Exxon sales represent 18 per cent "of the gas market in the UK, which is Europe's largest user of natural gas."[50] Exxon has other chemical production and distribution and transportation businesses in the UK as well.

ExxonMobil Corporation's 2016 Financial Report states that sales and other revenue from the UK was US$17.9 billion in 2016, down from US$23.7 billion in 2015, and US$31.3 billion in 2014.[51] A significant amount of this revenue must have been generated by Exxon subsidiaries not involved in North Sea oil and gas production.

Esso UK Limited, which is owned by Esso Holding Company U.K. Inc. in Delaware, is the holding company for most Exxon subsidiaries with UK operations. Esso UK Limited owns: Esso Exploration and Production UK Limited, ExxonMobil International Limited, ExxonMobil UK Limited, International Marine Transport Limited, Mobil Trading and Supply Limited and indirectly owns eight other companies and holds investments in others.[52] These UK indirect and direct subsidiaries appear to be all of the ExxonMobil Corporation's principal operating companies in the UK.[53]

The 2016 annual report for Esso UK Limited reports after tax profit for the year of GBP 634 million and GBP 181 million in 2015.[54] The filing does not contain a cash flow statement, but the income statement shows pre-tax profits of GBP 630 million and GBP 178 million in 2016 and 2015, respectively, and tax refunds or credits of GBP 4 million and 3 million, which increased take-home profits to GBP 634 million and GBP 181 million.[55] The entire income of the company is derived from dividends from UK subsidiaries and therefore not subject to corporate income tax.[56]

While some of the Esso UK Limited subsidiaries may have paid income tax it is remarkable that US$17.9 billion and US$23.7 billion in revenues can result in millions in tax credits or refunds.

US TAX REFUNDS RESULT IN -5.1% EFFECTIVE TAX RATE

The company's own estimate of its effective tax rate in 2016 was 13 per cent; however, independent estimates suggest that the real effective tax rate was -5.1 per cent with Exxon getting a US refund of US$406 million in 2016.[57] This is the lowest tax rate of any major US company, except GE.[58] Exxon also has a law suit against the IRS, the US tax authority, which is seeking US$1.35 billion in tax refunds.[59]

Exxon was also in a recent legal dispute with a local government in the Houston area over property taxes for a new corporate campus. Exxon contested the assessed value but refused to provide company documents to supporting documents.[60] Exxon later dropped the lawsuit against the county the day before it would have been ordered to hand over company documents.[61] (As discussed below, Exxon has resisted providing company documents in Australian tax disputes as well.)

52. Esso UK Limited, Annual Report and Financial Statements for the Year Ended 31 December 2016, p.15, Note 10, Fixed Asset Investments. https://beta.companieshouse.gov.uk/company/01589650/filing-history/MzE4NjAxNTM2NGFkaXF6a2N4/document?format=pdf&download=0
53. http://corporate.exxonmobil.com/en/company/worldwide-operations/locations/united-kingdom/about/overview
54. Esso UK Limited, Annual Report and Financial Statements for the Year Ended 31 December 2016, p.1, Directors' Report.
55. Ibid, p.9.
56. Ibid, p.13, Note 6, Income from Fixed Asset Investments; p.14, Note 9, Taxation.
57. https://www.dallasnews.com/business/exxon-mobil/2017/11/03/exxon-mobils-tax-rate-last-year-really-51
58. Ibid.
59. https://www.washingtonpost.com/news/wonk/wp/2017/08/21/irs-whistle-blower-who-questioned-paper-industry-tax-break-fights-to-keep-his-job/?utm_term=.29af179b623a
60. http://www.houstonchronicle.com/business/real-estate/article/Exxon-Mobil-s-property-tax-dispute-with-appraisal-8353382.php
61. http://www.chron.com/business/real-estate/article/Exxon-Mobil-backs-off-from-property-tax-dispute-9198145.php

EXXON'S UK SUBSIDIARIES CONNECT TO AUSTRALIA AND ASIA-PACIFIC

Other Exxon subsidiaries registered in the UK, but not part of the UK corporate structure, connect back to Exxon operations in Australia and the broader Asia-Pacific region.

ExxonMobil Holding Company Limited directly owns Esso Holding Company Singapore Ltd in the Bahamas, which directly owns ExxonMobil Asia Pacific Pte Ltd in Singapore, the largest trading partner with Exxon's Australian operations.[62]

The Singapore company is discussed in the previous submission and is likely to be the largest trading partner of Exxon subsidiaries in New Zealand and other countries in the Asia-Pacific region. ExxonMobil Holding Company Limited also directly owns Esso Global Investments Limited in the Bahamas.[63] As discussed in the previous submission, loans of more than US $7 billion from the Bahamas parent to the Singapore company were transferred to Esso Global Investments Limited in 2015. Apparently, both Bahamas-based companies have the same UK parent company.

ExxonMobil Holdings Company Limited also directly owns two other companies in Hong Kong and indirectly owns interests in many other companies in Hong Kong, Singapore, China, Malaysia, India and the Bahamas.[64]

In turn, UK-based ExxonMobil Holdings Company Limited is owned by ExxonMobil Holdings Luxembourg International S.a.r.l. in Luxembourg.[65]

ExxonMobil Holding Company Limited reported an after-tax profit of US$38.7 million after paying out dividends, presumably to the parent company in Luxembourg, of US$50 million.[66] The company had net assets of US$21.4 billion, received dividends from subsidiaries of US$75 million and paid $43.2 million in related party interest charges.[67] Once again, the company does not provide a cash flow statement to determine actual taxes paid, but the income statement shows a tax credit of US$8.7 million in 2016 and US$4.6 million in 2015, which increase reported profits.[68]

Another UK incorporated company, ExxonMobil Investment Company Limited -owned by ExxonMobil UK Finance Holdings Inc. in Delaware- is a holding company for ExxonMobil Finance Company Limited.[69] In 2016, ExxonMobil Finance Company Limited had almost US$6 billion in "Intercompany loans", down slightly from US$6.6 billion in 2015.[70] These related party loans appear to have generated turnover of US$299 million in 2016.[71] Sixty-nine percent of this turnover, or US$206 million, was from "Australasia" and the remainder from the Middle East, according to the "Analysis of turnover by country of destination".[72] There is no further information on countries in Australasia, but Australia is likely to one of them, if not the only one. Disclosed interest rates on amounts "repayable after more than five years include loans" that range from 5.710 per cent to 6.940 per cent.[73] These rates appear to be far higher than normal commercial loans. Are these loans used for aggressive tax minimisation in Australia?

ExxonMobil Oil Indonesia Inc. is registered in the UK but incorporated in the Cayman Islands; the company is involved in the management and oversight of petroleum operations in Indonesia.[74] The company's 2016 financial statement provides very limited information. The Profit and Loss Account shows losses of GBP 6.7 million in 2016 and GBP 34.8 million in 2015.[75]

The committee should encourage the ATO to exchange information on Exxon's tax planning and how it may be impacting revenue collections in the UK, Australia and elsewhere in the Asia-Pacific region, if they are not doing so already.

62. ExxonMobil Holding Company Limited, Financial Statements for the Year Ended 31 December 2016, p.15, Note 12, Fixed Asset Investments. https://beta.companieshouse.gov.uk/company/08559280/filing-history/MzE4MDE1MTc5MWFkaXF6a2N4/document?format=pdf&download=0
63. Ibid.
64. Ibid.
65. Ibid, p.19, Note 20, Controlling Party.
66. Ibid, p.1, Directors' Report.
67. Ibid, p.3, Strategic Report.
68. Ibid, p.7, Statement of Comprehensive Income.
69. ExxonMobil Investment Company Limited, Financial Statements for the Year Ended 31 December 2016, p.19, Note 20, Controlling Party (for Delaware incorporation see attachment on subsidiaries) and p.3, Strategic Report. https://beta.companieshouse.gov.uk/company/05298041/filing-history/MzE4NTk2ODk2MmFkaXF6a2N4/document?format=pdf&download=0

EXPOSING EXXON'S TAX HAVEN SUBSIDIARIES

"There is stark difference in the number of companies that Exxon reports in tax havens and those that can be identified from other sources."

The previous submission reported that a search of the International Consortium of Investigative Journalist's (ICIJ) Offshore Leaks database revealed a total of 575 companies in the Bahamas beginning with the names ExxonMobil, Esso, Exxon and Mobil, including two companies with apparent ties to Australia. That list is included as an appendix to this submission in an excel spreadsheet. The primary list of 571 Bahamas subsidiaries is from the Bahamas leak, a separate tab shows 4 additional (not closed) Bahamas based subsidiaries from other ICIJ leaks. This list also includes: Esso International (Group) Ltd. in the Cayman Islands and other subsidiaries in Barbados and British Anguilla that also appear to be active. Subsidiaries that appeared to be connected to individual petrol stations were removed from these lists.

While some of the Bahamas companies may be de-registered or no longer active, there are likely to be many additional Exxon subsidiaries in the Bahamas that are not so easily identified. One example is the subsidiary discussed above in relation to Exxon's PNG investment, Papua New Guinea Liquefied Natural Gas Global Company LDC. This entity is listed in the Offshore Leaks database, but not included in the list of 575 Exxon subsidiaries in the Bahamas.[76]

The Bahamas leak list from the ICIJ Offshore leaks database includes:

- 8 companies connected to Indonesia
- 6 companies connected to PNG and
- 2 companies connected to New Zealand.

One attached spreadsheet, based on a search of the website of the Registrar of Companies in Bermuda, provides a list of 24 Exxon subsidiaries in Bermuda, 6 of which relate to Indonesia.

Another attached spreadsheet, based on a search of the website of the Delaware Department of State: Division of Corporations, provides a list of 365 Delaware subsidiaries, including Esso Australia Resources Ltd, incorporated in 1963, one other subsidiary connected to Australia and 5 connected to Indonesia.

Another attached spreadsheet contains a list of Exxon subsidiaries in other tax havens from a search conducted through the Dato Capital website. This list identifies:

- 70 subsidiaries in Panama (1 connected to Indonesia)
- 69 subsidiaries in the Netherlands (as indicated in the previous submission there are hundreds of Exxon subsidiaries incorporated in the Netherlands)
- 39 subsidiaries in Luxembourg
- 18 in the Cayman Islands (7 connected to Indonesia)
- 1 in Curacao

A final spreadsheet, also attached, contains a list of 157 Exxon subsidiaries as disclosed in Exhibit 21 of ExxonMobil Corporation's 10K (annual report) filed with the US Securities and Exchange Commission (SEC). The list has been sorted by country. Exxon discloses only 49 subsidiaries in Delaware, 21 in the Bahamas, 8 in the Netherlands, 2 in Luxembourg and one each in Bermuda and the Cayman Islands (both related to Indonesia).

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70. ExxonMobil Finance Company Limited, Financial Statements for the Year Ended 31 December 2016, p.21, Note 20, Related Party Transactions. https://beta.companieshouse.gov.uk/company/05298032/filing-history/MzE4NTk2ODk2M2FkaXF6a2N4/document?format=pdf&download=0
71. Ibid.
72. Ibid, p.13, Note 3, Turnover.
73. Ibid, p.19, Note 16, Loans.
74. https://beta.companieshouse.gov.uk/company/FC027215
75. ExxonMobil Oil Indonesia Inc., Financial Statements for the Year Ended 31 December 2016, p.1, Profit and Loss Account. https://beta.companieshouse.gov.uk/company/FC027215/filing-history/MzE5NTA4MzA0MmFkaXF6a2N4/document?format=pdf&download=0
76. https://offshoreleaks.icij.org/nodes/20157903

There is stark difference in the number of companies that Exxon reports in tax havens and those that can be identified from other sources. There is no requirement to report all subsidiaries for US listed companies. Is the primary purpose of these companies to minimise tax payments? If not, what is the purpose?

A recent report, prepared pursuant to EU directives for mandatory disclosure for extractive industries, reveals that ExxonMobil Luxembourg et Cie SCA ("ELEC") and its subsidiaries own oil and producing operations in Angola, Germany, Guyana, Ivory Coast and the Netherlands.[77] This Luxembourg entity is described as "an intermediate holding company" and the "ultimate parent is Exxon Mobil Corporation in Irving, Texas in the USA."[78] There is no information on the immediate parent company or any of the subsidiaries.

If Luxembourg, can implement mandatory disclosure of payments to governments by extractive companies on a project by project basis, then surely Australia can adopt similar mandatory disclosure regulations to increase transparency and reduce corruption.

EXXON (ESSO) TAX HISTORY IN AUSTRALIA

The Petroleum Rent Resource Tax (PRRT) became effective in January 1988, but production in Bass Strait, led by Esso, switched from an existing royalty/excise regime to the PRRT in 1990-91.[79] Esso's major customers were two Victorian government owned utilities.[80] Esso, under existing sales contracts, attempted to shift the increased cost from the PRRT to the state-owned utilities in the form of increased gas prices.[81] The public utilities disputed Esso's ability to increase the sales price to cover the cost of the PRRT and arbitration began to resolve the dispute. Independent arbiters found in favour of Esso, the decision was appealed, but ultimately a settlement was negotiated in 1996. The Victorian government agreed to pay $450 million "for past and future PRRT claims on Bass Strait gas" and agreements were reached that there would be "no change in the price of gas supplied ... until 2001 for residential gas and until 2000 for industrial users."[82]

While Exxon claims to have paid billions in PRRT royalty payments; residential and industrial customers in Victoria and elsewhere in Australia may actually have paid a significant amount of Exxon's royalties through increased gas prices charged by the company. Exxon has continued

77. ExxonMobil Luxembourg et Cie, Report on Payments to Governments in respect of Extractive Activities Year ended December 31, 2016, p.2.
78. Ibid, p.3.
79. Department of Industry website, "The history of Petroleum Resources Rent Tax", https://industry.gov.au/resource/Enhancing/ResourcesTaxation/PetroleumResourceRentTax/Pages/PRRTHistory.aspx
80. Oil and Gas Journal, 16 December 1996, "Esso, BHP resolve Victoria tax dispute". http://www.ogj.com/articles/print/volume-94/issue-51/in-this-issue/general-interest/esso-bhp-resolve-victoria-tax-dispute.html
81. Ibid.
82. Ibid.

to contest their PRRT and corporate tax bills by taking the Australian Government to court.

An aspect of the arbitration between the Victorian government and Esso also made its way to the high court because Esso refused "to disclose details of calculations supporting its claim unless [the public utilities] agreed not to disclose to anyone else, including the responsible government minister, the commercially-sensitive information the calculations revealed."[83] The high court ultimately dismissed with costs Esso's appeal and maintained that documents produced by Esso in arbitration were not subject to confidentiality and could be shared with the Minister and others.[84]

"While Exxon claims to have paid billions in PRRT royalty payments; residential and industrial customers in Victoria and elsewhere in Australia may actually have paid a significant amount of Exxon's royalties through increased gas prices charged by the company. Exxon has continued to contest their PRRT and corporate tax bills by taking the Australian Government to court."

Exxon has been involved in extensive litigation over tax issues with the ATO for many years. The purpose here is not to understand the current status of these disputes or whether they have been resolved or how they were resolved, but to indicate the extensive legal measures that Exxon has taken in order to avoid tax obligations in Australia. How much has Exxon spent in legal costs challenging the ATO and how much has the ATO spent in dealing with Exxon's claims?

According to a 2011 letter and submission from the then Chairman of Esso Australia Pty Ltd to the House of Representatives, the company has been in dispute with the ATO "since shortly after [Bass Strait] was brought into the PRRT regime in 1991" and the company was appealing "a recent Federal Court decision".[85] The submission goes on to state that the "Esso has been in dispute with the ATO on the precise identification of the 'taxing point' in the Bass Strait project since 1994 and has objected to all 'years of tax' from 1991 through to 2006. … The ATO did not make any rulings on 'taxing point' until 2004, when it rejected Esso's objections for the years of tax from 1991 to 2002."[86] The Esso Australia letter/submission states that "Esso is of the view that it has significantly overpaid tax in the twelve years in dispute."[87]

In a separate case in 2012, but also concerning PRRT payments, the Federal Court refused Esso's special leave to appeal to the High Court and upheld the decision for the Commissioner of Taxation.[88] Esso's attempts to deduct "various office facility, administrative and accounting expenditures, service fees and mutualised research costs" from taxable profit under the PRRT were rejected by the ATO.[89]

In addition to contesting PRRT assessments through the federal courts, Exxon has also contested income tax payments as well. Esso refused to provide relevant documents to prove its case against the ATO because it claimed those documents were covered by client legal privilege.[90]

Given the complexity of these legal cases, we strongly encourage the committee to request from the ATO a briefing of the history and current status of all legal disputes with Exxon subsidiaries in Australia. As these court cases are in the public domain, the ATO should be able to comment. This history should provide insight into Exxon's relationship with the ATO and the oil giant's consistent and ongoing efforts to aggressively reduce tax obligations in Australia.

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83. David Bennett Q.C., Owen Dixon Chambers West, Melbourne, ACLN – Issue #49, 1996, "Public Interest, Private Arbitration and Disclosure". http://www.austlii.edu.au/au/journals/AUConstrLawNlr/1996/54.pdf
84. Ibid.
85. John R Dashwood, Chairman, Esso Australia Pty Ltd, 26 October 2011, Letter and Submission – Tax Laws Amendment (2011 Measures No.8) Bill 2011. https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=economics/tax%20laws/subs/sub07.pdf
86. Ibid.
87. Ibid.
88. Australian Tax Office, Decision Impact Statement, Esso Australia Resources Pty Ltd v. Commissioner of Taxation. http://law.ato.gov.au/atolaw/view.htm?docid=LIT/ICD/VID630-631of2011/00001
89. Ibid.
90. http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/1998/1998fca1655 or https://www.ato.gov.au/law/view/document?DocID=JUD%2F40ATR512%2F00001 or http://www.austlii.edu.au/au/journals/SydLRev/1999/25.html

Conclusion: ExxonMobil is engaged in aggressive corporate tax avoidance across the world, including in Australia and New Zealand.

Conclusion

Our research indicates ExxonMobil is engaged in aggressive corporate tax avoidance across the world, including in Australia and New Zealand.

Australia and other countries have inadequately dealt with corporations like Exxon.

Exxon's continued social license to operate in Australia needs to be questioned. There must be real consequences for companies like Exxon that continue to pursue aggressive tax minimisation or avoidance strategies in Australia and around the world.

If Exxon is allowed to continue to avoid tax obligations other multinationals are more likley to use the same aggressive tax avoidance schemes. Companies that do a pay a fair share of tax, particularly domestic companies without the ability to create complex corporate structures in tax havens, will remain at a significant competitive disadvantage.

It is time for all of us to demand that multinationals like ExxonMobil start to pay their fair share. It's time to Make Exxon Pay!

Recommendations

1. Introduce legislation for mandatory disclosure reporting regimes that require all resource companies, including those engaged in Australia's offshore oil and gas industry, to disclose all payments made to and from governments on a project-by-project basis (PRRT, corporate income tax, diesel rebates);
2. Review all deductions used by corporations and reduce the allowable list of deductions to fit with community standards to avoid aggressive tax avoidance and profit shifting (such as transfer pricing, related-party loans, marketing hub charges, legal costs, lobbying expenses (direct and indirect), carry forward losses, etc.), with changes swiftly legislated by the Parliament;
3. Ensure that the Australian Government, through the ATO and other departments and agencies, investigates all claims made by TJN and Make Exxon Pay by appointing a special investigator to report back to the Committee on any findings;
4. Require the ATO to exchange information on Exxon's tax affairs with other relevant national tax authorities, if they are not already, and provide technical assistance, if necessary or requested by foreign governments;
5. Enact legislation to require all large companies operating in Australia, particularly private subsidiaries of multinationals, to comply fully with all Australian accounting standards and not be allowed to qualify for reduced disclosure;
6. Reform the PRRT (including through increased scrutiny on PRRT reporting, ending the self-audit system, eliminating generous and transferable uplift rates, reviewing the methodology used to calculate taxable profit, etc.);
7. Introduce a 10% royalty for all new offshore gas projects in Commonwealth waters to ensure Australia gets a fair share from our natural resources.

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EXXON’S CONTINUED SOCIAL LICENSE TO OPERATE IN AUSTRALIA NEEDS TO BE QUESTIONED. THERE MUST BE REAL CONSEQUENCES FOR COMPANIES LIKE EXXON THAT CONTINUE TO PURSUE AGGRESSIVE TAX MINIMISATION OR AVOIDANCE STRATEGIES IN AUSTRALIA AND AROUND THE WORLD.

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