

# GLENCORE plc

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Dear Dr Parfitt,

Thank you for providing Glencore with the opportunity to provide a response to the allegations you intend to make against our company in your forthcoming report.

Glencore is one of the world's largest natural resource companies. We own and operate a diverse mix of assets all over the world, and we are engaged at every stage in the commodity supply chain; a unique business model that creates value for our stakeholders. The commodities we produce and market are used in everyday life, providing electricity, in production of steel, cement, wiring for buildings, automotive parts, home appliances, batteries and medical applications.

#### Our approach to tax payments

Group-wide, we are committed to comply with all applicable tax laws, rules and regulations and we pay all relevant taxes, royalties and other levies in amounts determined by the legislation of relevant governments. We do not enter into artificial arrangements in order to avoid taxation or to defeat the stated purpose of the tax legislation, nor do we undertake aggressive tax planning. As set out in our [Group Tax Policy](#), we seek to maintain long-term, open, transparent and cooperative relationships with tax authorities in our host countries.

#### Our contributions to the Australian economy

Australia is a significant part of Glencore's global business and our business is a major contributor to the Australian economy. In Australia, we employ over 17,000 people (including contractors) in industries that include coal, copper, nickel, cobalt and zinc.

We are proud of the contribution we make in Australia, which extends far beyond our tax and royalty payments to Australian federal, state and local governments. Since 2010, we have invested around AUD20 billion in Australian projects and operations and paid AUD19 billion in taxes and royalties to Australian federal and state governments, including AUD3.8 billion in corporate income tax, which is paid on profits not revenue.

#### Our relationship with the ATO

Australia, through the Australian Taxation Office (ATO), has some of the most robust tax integrity and transfer pricing measures in the world, which have been significantly bolstered over the past few years.

As a major economic contributor to Australia, Glencore has a constructive relationship with the ATO that is based on regular and transparent engagement with respect to our tax affairs. This level of engagement supports the ability of the ATO to review Glencore's tax affairs on a timely basis and gain an understanding of ongoing developments in the group's Australian business.

Given the size and scope of Glencore's business activities in Australia, the ATO generally undertakes a continuous review of our Australian tax affairs to obtain assurance that we are fully complying with Australia's tax laws. This includes audits and less formal review processes of the group's financing and other arrangements, as well as real time reviews of our annual returns. As part of this process, Glencore works collaboratively and transparently with the ATO to address and resolve any concerns that arise in respect of its tax affairs. The ATO is fully informed in respect of Glencore's cross border related party transactions.

Reflecting the scale of our Australian operations, we have adopted an enhanced tax governance and assurance programme. This recognises that tax risk management is an important part of good corporate governance and provides the ATO with assurance over routine transactions in addition to engagement on more complex transactions.

Commercial transactions can be multifaceted, and some areas of tax law are inherently complex and subject to interpretation. As such, there may be differences of opinion between the ATO and Glencore from time to time. Given the uncertainty around the application of tax law at times and the legitimate concern of tax administrations to collect the full amounts due to them, our arrangements are subject to ongoing and careful scrutiny, and even occasional dispute, where the tax authorities may take a differing view or disagree with our interpretation of tax law.

We recognise that on occasion there will be areas in which our legal interpretation may differ from that of tax authorities and where the tax treatment of activities and transactions is uncertain. In such cases, Glencore engages in proactive discussions with the relevant tax authority with a view to bringing matters to a reasonable conclusion as rapidly and equitably as possible.

Information in relation to Glencore Australia, its operations and economic contribution is publically available via the following forums:

- EU Directive/Sustainability Report (Payments to Government Report)
- Extractive Industries Transparency Initiative (EITI)
- Global Reporting Initiative (GRI)
- Glencore Australia's Economic Contribution Report
- Glencore 2021 Corporate Profile Australia
- ATO reporting of entity tax information

Glencore Investment Pty Limited also prepares and lodges audited consolidated financial statements with ASIC annually, with a copy also being provided to the ATO.

In response to your specific allegations:

**1. Glencore abuses transfer pricing by improperly allocating profits and debt to avoid tax, and abuses shell company structures, depriving governments of vast amounts of tax revenues.**

We are a globally diversified natural resources company that both produces and markets commodities and our mining operations having expanded primarily through acquisition. This has led to a business structure where our Australian business is integrated with entities in other jurisdictions. Together, these assets work together to deliver production, processing, marketing, financing, management and administrative services.

Related party transactions between Glencore Group companies must comply with the arm's length principle as defined in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations and included in Article 9 of the OECD Model Tax Convention.

The OECD's Action 13 of its base erosion and profit shifting (BEPS) project, significantly increased transparency standards for multinational taxpayers by introducing new requirements for transfer

pricing documentation and country-by-country reporting (CbCR). In addition to complying with the new transfer pricing and CbCR requirements, Glencore is fully committed to Australian corporate tax transparency, and from 2018 has adopted the Australian Board of Taxation's voluntary Tax Transparency Code.

Glencore reports its international related party transactions to the ATO and other governing bodies annually, via the following:

- International Related Party Dealings schedule, which forms part of the corporate income tax return
- Country by Country reporting
- Glencore Investment Pty Limited (GIPL) audited financial statements related party notes
- Board of Taxation Voluntary tax transparency report

You suggest that your report will note the recent litigation between Glencore and the Australian Commissioner for Taxation. If this is the case, the report should also acknowledge that the Australian Federal Court and Full Federal Court confirmed that related party sales of copper concentrate from Glencore's wholly-owned Cobar Australian copper mine to Glencore International AG (GIAG) were in accordance with the arm's length requirements and upheld Glencore's appeal against the ATO. The High Court of Australia declined the ATO's request for special leave to appeal and the matter was finalized in Glencore's favour.

**2. Glencore's primary corporate entity in Australia had total income [revenue] of nearly AU\$28 billion over a 3-year period (2013/14 – 2015/16) but paid zero in corporate income tax.**

This is incorrect. Corporate income tax is paid on taxable profits not revenue.

Revenue is an extremely misleading indicator of tax liability. Our business is highly cyclical, exceedingly capital intensive and our investment is long-term in nature. Our profitability is primarily driven by the price of our core commodities. During 2017, these commodity prices began to improve considerably after a five-year downturn, marked by low prices and low profitability.

In Australia, during 2016 to 2019, we utilised tax losses that were previously generated in relation to the Jubilee Nickel assets in Western Australia; its mining operations were uneconomic and production ceased. These losses amounted to AUD3.2 billion and their use in offsetting subsequent profits is uncontroversial and entirely in accordance with Australian tax law.

Other factors that impacted the amount of corporate income tax paid since 2010 include, but are not limited to:

- A fall in prices across various commodities;
- Material financing costs relating to a series of acquisitions of mines from third parties; and
- Foreign exchange impacts.

Since 2010, Glencore Australia has paid AUD3.8 billion in corporate income tax. We expect very significant tax payments to be made in relation to our 2021 earnings reflecting strong commodity prices across the portfolio of Australian assets which is flowing through to strong profitability.

**3. In recent years, Glencore's tax payments in Australia have jumped significantly, an apparent result of the exhaustion of debt-based tax shelters.**

This is incorrect and explained by our response to allegation 2.

**4. After the exposure of Glencore's marketing arrangements for coal via Singapore, Glencore agreed to shut down the Singapore coal marketing hub during an Australian Senate inquiry into**

**tax avoidance in 2015. However, Glencore appears to have set up something worse in its place. Specifically, Glencore's arrangement of selling coal via a subsidiary in Switzerland appears to allow Glencore to book profits from Australian coal in Switzerland where, according to corporate reports, no tax is paid.**

This is incorrect.

The main trading company of the Glencore Group is Glencore International AG (GIAG), it is also the parent, not a subsidiary, of Glencore's Australian operations.

Glencore chose to close its Singapore coal marketing function following its 2013 acquisition of the Xstrata mining group. As a result of this acquisition, we inherited Xstrata's coal function, based in Singapore. However, there was an unnecessary duplication of functions due to our existing marketing function in Switzerland (established in the 1970s).

The vast majority of our Australian coal sales are made directly to third-party customers and any coal our Australian businesses sell to GIAG is approved in accordance with a strict process that includes verification of the price to comparable market transactions at the time the sale is agreed.

As part of our ongoing engagement process with the ATO, the ATO requests details on a sample basis of these transactions including details of the on-sale from GIAG to the end customer. There are currently no ATO audits concerning Glencore coal sales, both current and historic, to Glencore companies in Switzerland, Singapore or other locations.

- 5. 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.**

This is incorrect.

Our global business is held via Switzerland, not Australia. Until our acquisitions of the Viterro grain group in 2012 and the Xstrata mining group in 2013, our Australian business was relatively modest and did not include material offshore operations. The Viterro and Xstrata transactions led to a significant transformation of our Australian business, and the Xstrata acquisition, in particular, resulted in Glencore Australia inheriting a complex corporate structure.

In 2014, we undertook a project to streamline our Australian corporate structure. This included separating the material foreign assets from the main Australian GIPL structure (where possible) and significantly reducing levels of debt in Australia. Since the Senate Inquiry in 2015, and in line with our global deleveraging strategy, our Australian business has repositioned its balance sheet resulting in further reductions in debt and now uses this debt to support only our Australian operations (not the offshore global business). This has been supported by the strong cash-flow generated by our Australian industrial assets, significantly better commodity prices, and a number of material asset sales.

Our Australian debt arrangements, including those of a cross-border nature, are established in accordance with arms-length principles and reviewed for transfer pricing compliance on a regular basis from the perspective of both the lender and borrower jurisdiction. These financing arrangements have been fully disclosed to the ATO.

- 6. There are grounds to suspect profit shifting by Glencore based on the massive volume and complexity of offshore lending and borrowing, and related party transactions.**

As previously noted, related party transactions between Glencore Group companies must comply with the arm's length principle as defined in the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations and included in Article 9 of the OECD Model Tax Convention.

All sales from our Australian business to GIAG are approved in accordance with a strict related party approval process which includes verification of the price to comparable market transactions at the time the sale is agreed. As part of our ongoing engagement process with the ATO, the ATO requests details on a sample basis of these transactions including details of the on sale from GIAG to the end customer.

**7. The primary purpose of Glencore's complex global structure, using a multitude of tax havens, appears to be to minimise global tax payments.**

Although there is no universally applied definition of the term 'tax haven', it is generally understood to refer to a jurisdiction that imposes little or no tax on income or profits. In recent years, governments, the media and the public at large have raised legitimate questions in connection with the alleged diversion of business profits by multinational enterprises into tax havens mainly in order to avoid paying local taxes.

We do not undertake any such activity. Both our Group tax policies and our adherence to the OECD Transfer Pricing Guidelines forbid the allocation of profit to jurisdictions that do not provide value-adding activities and do not have any real commercial substance.

Nevertheless, we continue to make use of companies incorporated in what would be termed tax neutral or tax haven jurisdictions. Where that occurs, it is always for a specific purpose and the companies used can be referred to as special purpose vehicles (SPVs). Glencore primarily uses SPVs for two broad purposes:

1. As intermediate holding companies (to hold single investments, groups of similar investments or joint venture investments for accounting, administrative, governance or legal convenience).
2. As parties to a legal contract with a non-group member where it is necessary that the SPV has no other function.

Our continued use of the SPV is to serve a commercial or administrative purpose, has no tax motivation and is fiscally transparent, ie it generates neither a tax saving nor expense. For this reason, when we need to establish an SPV, it is often in a tax-neutral jurisdiction, as tax in these cases is an irrelevance.

Further details are provided in our annual Payments to Government report.

**8. 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 many unfulfilled promises to clean up its transfer pricing misbehaviour.**

We note that the matters that you reference for this allegation are a collection of a disparate set of allegations over a number of years many of which do not in fact relate to tax conduct. In so far as the allegations relate to tax conduct and transfer pricing, please see the answers to the allegations above.

In so far as the allegations relate to other matters, we are committed to maintaining a culture of ethics and compliance throughout the Group, rather than simply performing the minimum

required by law. We do not knowingly assist any third party in breaching the law, or participate in any criminal, fraudulent or corrupt practice in any country.

We do not engage in corruption and we never pay bribes, regardless of local custom or practice. Glencore's position on corruption is clear: the offer, payment, authorisation, solicitation and acceptance of bribes and other improper advantages is unacceptable. Our [Anti-Corruption and Bribery Policy](#) sets out our approach to the prevention of bribery and other forms of corruption.

In respect of the various investigations that are ongoing into the Glencore Group, we are taking them very seriously and Board has appointed a committee, the Investigations Committee ("the Committee"), to oversee the response to the investigations on behalf of the Board. The Committee has engaged external legal counsel and forensic experts to assist in responding to the various investigations and to perform additional investigations at the request of the Committee covering various aspects of the Group's business. The Group is continuing to cooperate fully with the various authorities.

Glencore has taken a number of remedial measures in light of what it has learned during the investigations. Glencore has significantly enhanced its Group Ethics and Compliance programme over the last few years with a view to developing a best in class programme. Our Group Ethics and Compliance programme includes risk assessments, policies, standards, procedures and guidelines, training and awareness, advice, monitoring, speaking openly and investigations. We consider guidance from relevant authorities and international organisations and work with leading advisers to ensure that we are aligned with international best practices.

To manage our bribery and corruption risk, we implement a range of procedures and controls relating to dealings with public officials, gifts and entertainment, our business partners, sponsorships and donations, political contributions and record keeping. We expect our employees, directors and officers, as well as contractors under Glencore's direct supervision, to remain alert to corruption and bribery red flags and report them to Compliance.

**9. There are grounds to suspect Glencore of involvement in corruption and bribery.**

See response to allegation 8.

**10. There are grounds to suspect Glencore's involvement in a corrupt scheme with Dan Gertler in which he was paid a secret US\$45 million amount which may have been a bribe.**

See response to allegation 8.

**11. There are grounds to suspect Glencore of corruption in relation to dealings in Venezuela and Iran.**

We note that CICTAR have decided to withdraw details on the US Department of Justice investigations into alleged money laundering and corruption by Glencore in Venezuela (among other countries) and the work of various US corporate regulators scrutinising our operations in Iran. In any event, our response to allegation 8 addresses this allegation

**12. Glencore's failure to report tax haven locations of its subsidiaries to the Australian Senate during a 2015 inquiry into tax avoidance could be interpreted as a direct attempt to mislead the Australian Parliament and a failure to disclose all of the information that was requested.**

This is incorrect. During the Senate inquiry, we answered all questions on tax havens.

Glencore provided responses on 24 April 2015 and 12 May 2015 to a number of questions taken on notice from the Senate inquiry. Three of these focused on Glencore Australia's foreign shareholdings:

- *Subsidiaries of the Glencore Australia Group in so called secrecy jurisdictions* – we provided a list, showing that as at 31 December 2014 there were 16 foreign subsidiaries in so called “low tax or secrecy jurisdictions” with the majority inherited from corporate acquisitions. All but one of the jurisdictions (Cyprus) were subject to the bilateral tax information exchange or sharing agreements with Australia. In addition, foreign companies are subject to Australia's rigorous Controlled Foreign Companies (CFC) tax regime, which applies Australian tax to offshore passive income
- *Whether the Glencore Australia Group has subsidiaries in Luxembourg* – we confirmed the Australian Group does not have any subsidiaries in Luxembourg.
- *List of the Glencore Australia's foreign subsidiaries* – we provided a list of Glencore Australia's foreign subsidiaries that included the relevant foreign jurisdiction. More than 80% of these foreign jurisdictions have Double Tax Agreements, Tax Information Exchange Agreements and/or are signatories to the Convention on Mutual Administrative Assistance in Tax Matters.

Copies of our responses can be found at:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Corporate\\_Tax\\_Avoidance/Additional\\_Documents?docType=Answer%20to%20Question%20on%20Notice](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Corporate_Tax_Avoidance/Additional_Documents?docType=Answer%20to%20Question%20on%20Notice)

As noted above, Glencore's annual Payments to Government report includes details on Glencore's use of companies in so-called tax havens.

**13. 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.**

We have reviewed all our entities established in ‘tax haven’ jurisdictions, including those in connection with our Australian operations, with the intention of consolidating or eliminating as many as possible. Where it is not possible to do this, these entities usually adopt tax residence in a non-tax haven jurisdiction where we can establish enhanced local substance. As a result of this review, we have removed from our group structure many tax haven-incorporated companies, or established their tax residence in Switzerland, the UK or another non-tax haven jurisdictions. The review has continued to be a focus during 2021.

From an Australian perspective, the number of Glencore Australia subsidiaries located in so called “low tax or secrecy jurisdictions” has reduced from 16 (as disclosed at the time of the 2015 Australian Senate inquiry) to five. During 2020, four of these remaining subsidiaries did not derive any revenue or profit. The location and activities of all Glencore Australia subsidiaries located offshore are disclosed to the ATO on an annual basis.

**14. There are grounds to suspect improper and unlawful transfer pricing and profit shifting to avoid taxes because related party transactions from Glencore Investment Pty Ltd in Australia to Glencore International AG in Switzerland**

This is incorrect.

The Glencore group is comprised of a number of separate legal entities established across a large number of jurisdictions. Like many multinational enterprises, our business activities are coordinated (in terms of personnel, assets and capital) on a worldwide basis and these activities give rise to many intra-group cross border transactions, including:

- Sales and purchases of various commodities, raw materials and consumables including coal, copper, zinc, nickel, cobalt and lead
- Supply and receipt of various services including technical, management and administrative services
- Provision and receipt of financing
- Provision of insurance

Glencore reports its international related party transactions to the ATO and other governing bodies annually, via the following:

- International Related Party (IRP) Dealings schedule, which forms part of the corporate income tax return
- Country by Country reporting
- GIPL audited financial statements related party notes
- Voluntary tax transparency report

In our 12 May 2015 response to the Senate Inquiry's Questions on Notice, we listed all of Glencore Australia's IRPs transactions during 2013 and 2014. These IRP transactions were not (and are still not) exclusively with GIAG.

As noted previously, all Glencore's Australian business sales to GIAG are approved in accordance with a strict related party approval process which includes verification of the price to comparable market transactions at the time the sale is agreed. As part of our ongoing engagement process with the ATO, the ATO requests details on a sample basis of these transactions including details of the on sale from GIAG to the end customer.

**15. There are grounds to suspect that Glencore's purchase of the remaining stake in the Cerrejón mine in Colombia earlier this year is a scheme to artificially create debt so as to reduce tax in Australia.**

This is incorrect.

We will not finance the purchase of the remaining stake in the Cerrejón mine via Australia. The current and extended investment in Cerrejón will be directly owned by UK resident holding companies, none of which are or will be debt financed.

We trust that our responses to these allegations will be adequately reflected in your report.

Yours sincerely



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