



Newcrest Mining Limited

**Submission to Senate Enquiry into Alleged Corporate Tax Avoidance
and Minimisation**

2 February 2015

Purpose of Submission

On 2 October 2014, the Senate referred an inquiry into corporate tax avoidance to the Senate Economic References Committee to examine tax avoidance and aggressive minimisation by multinational companies operating in Australia.

The background to the inquiry was a report by the Tax Justice Network (TJN) and media coverage, which alleged that some multinational companies pay little income tax, despite operating profitable businesses.

The purpose of this submission is to provide background on Newcrest's business and operations and to respond to the terms of reference for this review.

Executive Summary

Newcrest supports the Senate inquiry and considers it important to ensure companies are not inappropriately eroding the corporate tax base in Australia. However, as an Australian-based multinational company, Newcrest already incurs significant costs complying with the existing, extensive anti-avoidance rules and tax reporting requirements. We do not see any basis for increasing this compliance burden.

In **Section One** of this submission, Newcrest provides an outline of its business and operations as well as its processes for governing and managing taxation risk.

In **Section Two** of this submission, Newcrest responds to relevant items included in the Terms of Reference. In brief, Newcrest consider that the current taxation laws in Australia are robust and adequate and that care should be taken to ensure that recommendations resulting in further compliance costs and "red tape" are not outcomes of the inquiry.

In **Section Three** of this submission, Newcrest provides a brief outline of Newcrest's taxation and funding arrangements, which confirms that Newcrest does not engage in inappropriate strategies to minimise or avoid taxes and that its taxation outcomes during this period can be explained by reference to application of ordinary Australian taxation rules.

SECTION ONE – NEWCREST’S BUSINESS AND OPERATIONS

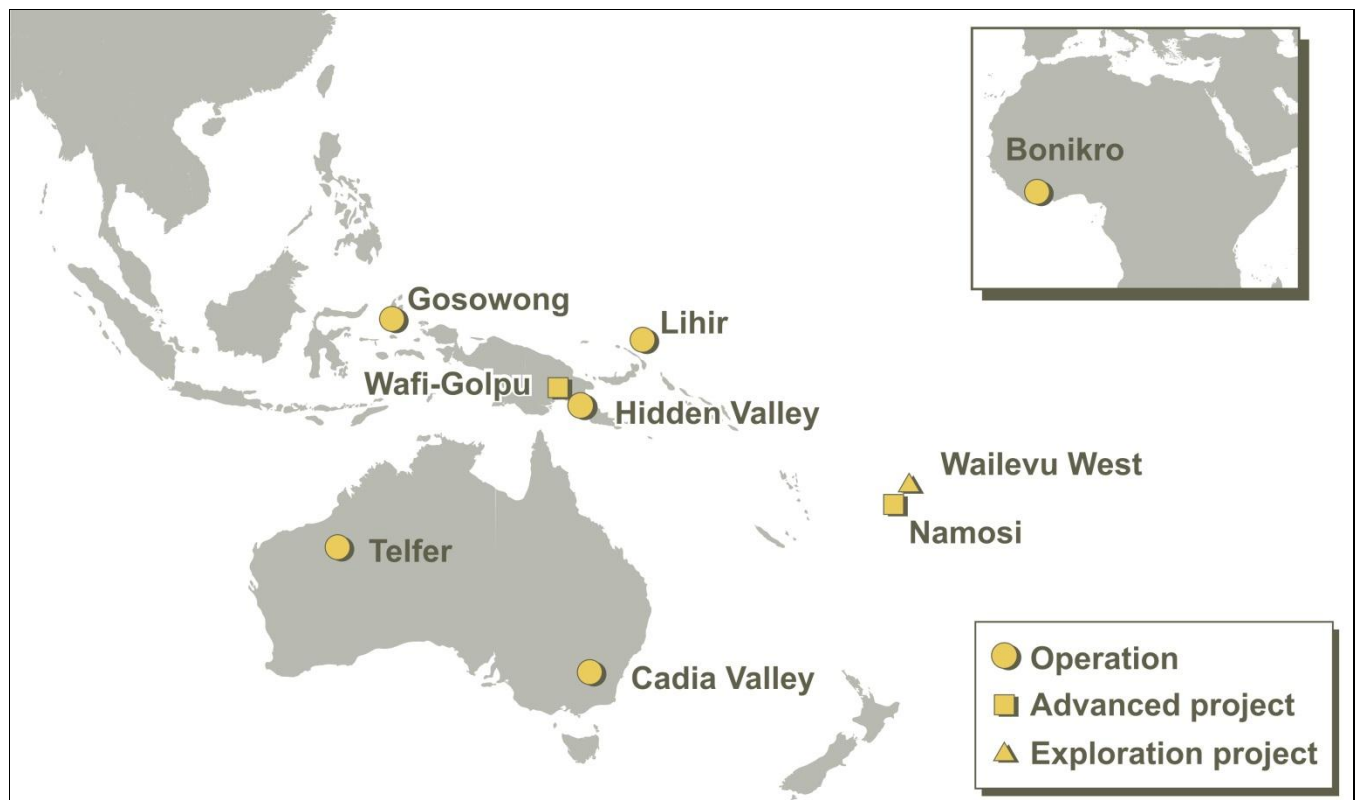
Newcrest Mining Limited

Newcrest is one of the largest gold companies in the world with a world class portfolio of operating mines, substantial gold reserves and a pipeline of growth options located primarily in the Asia-Pacific region.

Newcrest owns and operates a portfolio of predominantly low cost, long life mines and a pipeline of brownfield and greenfield exploration projects.

Newcrest uses a variety of mining methods for large ore bodies, together with selective underground mining methods to optimise high-grade epithermal deposits.

Newcrest is listed on the Australian Stock Exchange (ASX) and its mines are located in Australia, Papua New Guinea, Indonesia and Cote d’Ivoire, West Africa.



Newcrest Mining – Operations and Projects

Cadia Valley

The Cadia Valley operations are 100% owned by Newcrest and located in central western New South Wales. Over the last 10 years, operations at Cadia have evolved significantly from a single open pit mine through to the development of two underground mines. The currently operating mines are the Cadia East panel cave and the Ridgeway Deeps block cave.

Telfer

The Telfer operation is 100% owned by Newcrest and is located in Western Australia. In 2003 Newcrest recommenced mining at Telfer following a period of the operation being on care and maintenance. This recommencement was facilitated by substantial investment in plant and equipment as well as significant capital being expended for the development of both open pit and underground mines, which are still being mined today.

Lihir

The Lihir operation is 100% owned by Newcrest and was acquired by a deed of arrangement in August 2010. It is located on the island of Niolam, Papua New Guinea and is one of the world’s largest known gold deposits. A major expansion of the Lihir process plant was completed in 2013, enabling increased ore processing and operating flexibility.

Gosowong

The Gosowong operation is located on the island of Halmahera in eastern Indonesia. It is currently operating two underground mines, Kencana and Toguraci, and previously operated an open pit mine.

Gosowong is operated by PTNHM, an incorporated joint venture company that is 75% owned by Newcrest, with the remaining 25% interest held by PT Aneka Tambang (“Antam”).

Hidden Valley

The Hidden Valley operation is located in the Morobe Province in Papua New Guinea and produces gold and silver doré. The Hidden Valley operation is owned by a 50/50 unincorporated joint venture between subsidiaries of Newcrest and subsidiaries of Harmony Gold Mining Company Limited (“Harmony”).

Bonikro

The Bonikro operation is located in the central-southern portion of Côte d’Ivoire in West Africa and was acquired as part of the acquisition of Lihir. Newcrest holds an 89.89% interest, the government of Côte d’Ivoire holds a 10% interest and the remaining interest is held by a minority shareholder.

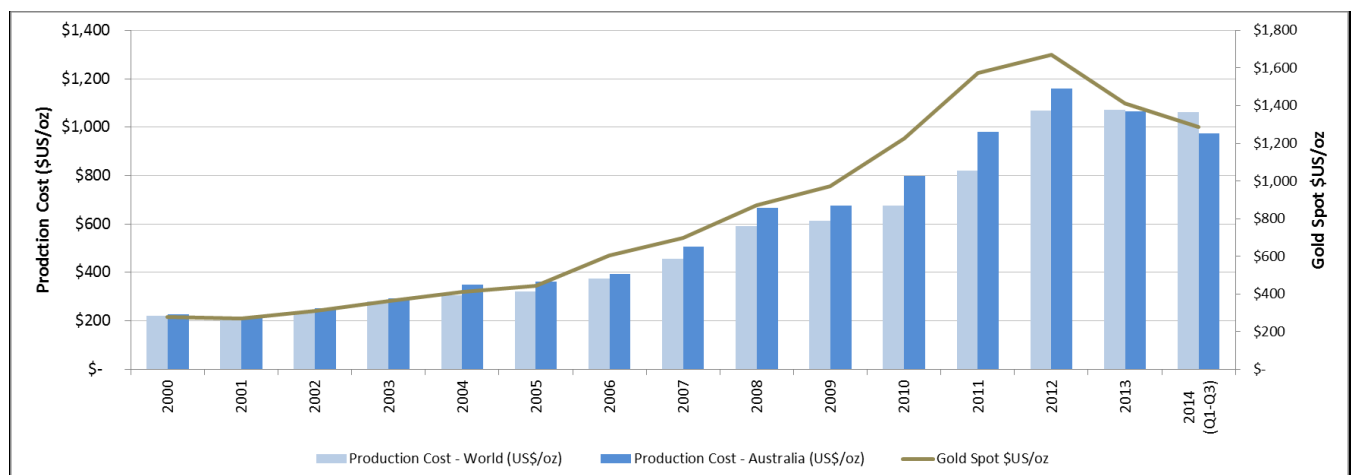
Wafi Golpu

The Wafi-Golpu project is Newcrest’s most advanced exploration project. It is located in the Morobe Province of Papua New Guinea, approximately 65 kilometres west of the town of Lae. The project is owned by a 50/50 joint venture between subsidiaries of Newcrest and Harmony. Exploration activity to date has shown that the Wafi-Golpu tenements host a world class porphyry deposit.

Recent History – Gold Industry and Newcrest

Whilst the gold price fell sharply in April 2013, the decade prior saw a significant increase in gold prices. However, over the same period, gold producing companies experienced significant increases in operating and capital costs, reducing the extent to which rising prices have translated into rising profitability or return on capital invested.

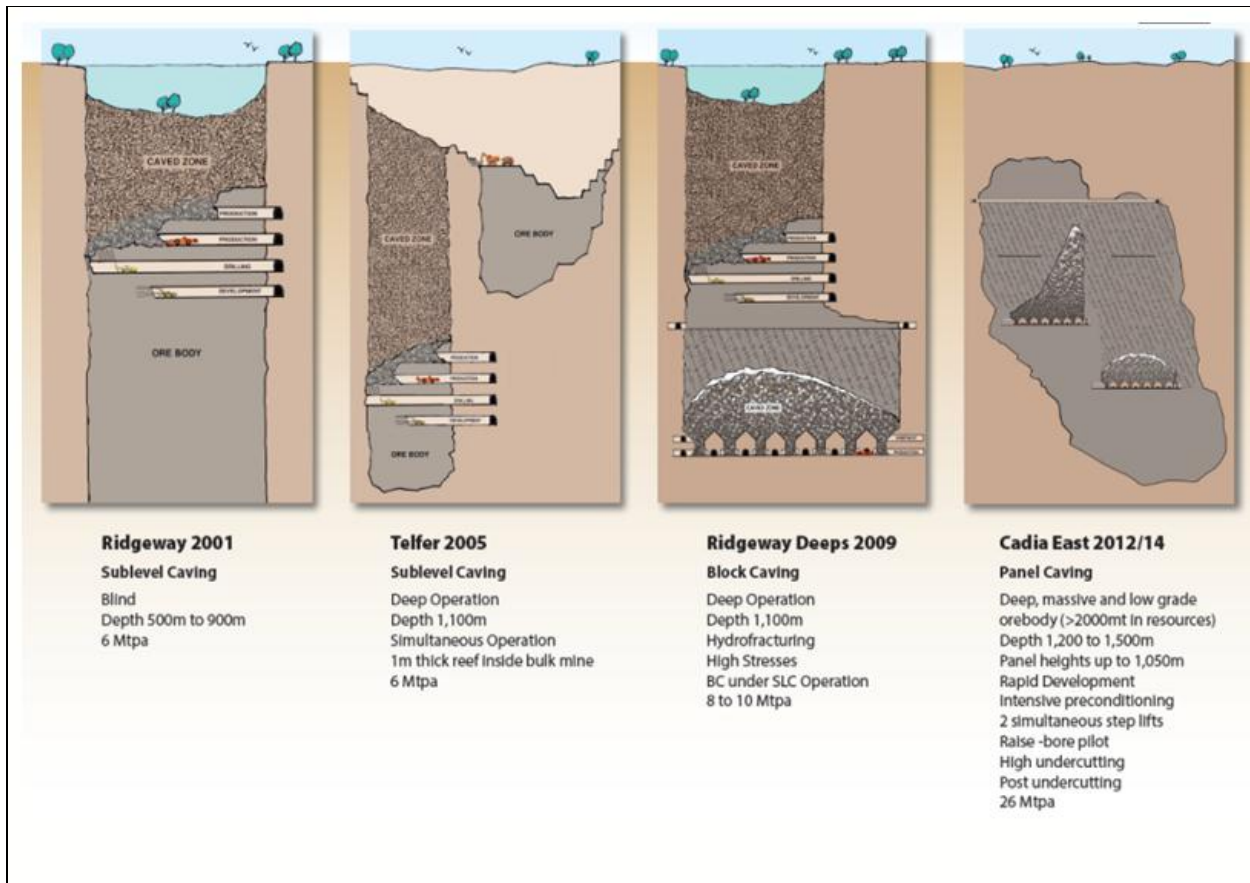
The relationship between spot gold prices and gold industry production costs over the last 13 years is depicted in the following chart:



Source: Thomson Reuters GFMS and Bloomberg

As a result of increased operating and capital costs, the reduction in the gold price since 2013 has further reduced (and in some cases eliminated) the margins associated with gold production. It has also resulted in significant impairments of the carrying value of operating assets held by gold mining companies, including Newcrest.

Over the same period, use of mining technology has increased within the gold mining industry as an enabler of cost-effective mine development and operation. The development of new technologies has been required to make deep, low-grade deposits viable to mine. This increased use of technology is particularly relevant to Newcrest’s Australian operations, where previously uneconomic mining deposits have been mined as a result of the deployment of innovative bulk underground mining methods. Newcrest has been at the forefront of underground caving development and, through a series of sequential developments (illustrated below), has evolved from being a miner focused on selective, open pit mining, to a global leader in bulk underground mining.



Relevantly, while the increased utilisation of technology is an enabler of mine development and operation, it requires significant upfront investment of capital.

Newcrest Tax Governance and Risk Management

Newcrest considers that it has a strong governance framework - including strong taxation governance - and as a result it does not engage in inappropriate tax avoidance or minimisation.

Newcrest Governance Framework

Newcrest regularly reviews its governance and compliance practices, taking into account the recommendations for effective corporate governance as published by the Australian Securities Exchange (ASX) Corporate Governance Council in the ASX Corporate Governance Principles and Recommendations. Oversight of risk management practices and internal controls is a key responsibility of the Board. Newcrest has a detailed risk management and internal control framework incorporating policies and procedures which set out the roles, responsibilities and guidelines for identifying and managing material business risks. The effectiveness of this framework is reviewed regularly by the Board with the support of the Audit and Risk Committee.

Newcrest Tax Governance Framework

Consistent with the Newcrest governance environment, Newcrest also has a defined tax governance framework, which details the controls in place to identify, assess, control, monitor and report tax risk. Taxation issues are presented to and considered by the Audit and Risk Committee of the Newcrest Board at least four times each year.

Newcrest's view that it does not engage in aggressive taxation behaviour is consistent with its recent low risk rating following a detailed and extensive client risk review by the Australian Taxation Office and the very small number of issues under extended review.

SECTION TWO – RESPONSE TO SELECTED TERMS OF REFERENCE

The Terms of Reference for the review are: *“Tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia, with specific reference to:*

- a) the adequacy of Australia’s current laws;*
- b) any need for greater transparency to deter tax avoidance and provide assurance that all companies are complying fully with Australia’s tax laws;*
- c) the opportunities to collaborate internationally to address the problem;*
- d) the performance and capability of the Australian Taxation Office (ATO) to investigate and launch litigation, in the wake of drastic budget cuts to staffing numbers;*
- e) the role and performance of the Australian Securities and Investments Commission in working with corporations and supporting the ATO to protect public revenue;*
- f) any relevant recommendations or issues arising from the Government’s White Paper process on the ‘Reform of Australia’s Tax System’; and*
- g) any other related matters.*

Newcrest has provided below its response to items (a), (b) and (c) but consider that other stakeholders are better positioned to provide responses on items (d) and (e). Given that neither the discussion paper nor Terms of Reference for the White Paper process have been released, no comment on item (f) has been made.

a) the adequacy of Australia’s current laws;

With regard to preventing tax avoidance and aggressive minimisation by multinational entities in Australia, Newcrest considers that Australia has some of the strongest anti-avoidance rules, the most critical of which are outlined below:

Existing Rule	Description
General Anti-Avoidance Rule – Part IVA	<p>Part IVA of the 1936 Tax Act are General Anti Avoidance rules which can apply to strike down any Australian income tax benefits arising from a scheme where the Commissioner of Taxation can successfully establish that the dominant purpose of a party involved in the transaction was to reduce the incidence of Australian income tax.</p> <p>This part of the act was substantially updated in 2013 following an announcement by the Government in 2012.</p>
Transfer Pricing Legislation	<p>Transfer pricing rules aim to ensure that the manner in which related parties transact with one another is consistent with the manner in which unrelated parties would transact and that they do not use the pricing of such transactions to inappropriately transfer profits from one jurisdiction to another.</p> <p>The transfer pricing rules were substantially updated in 2012 and 2013 with retrospective and prospective effect and are now considered some of the most robust in the world.</p>
Thin Capitalisation Legislation	<p>Australian thin capitalisation legislation limits the amount of debt that an Australian group can have. The “safe harbour” level of debt was reduced from 75% of total assets to 60% of total assets in 2014.</p>
Controlled Foreign Company Rules	<p>The controlled foreign company (CFC) rules apply to foreign subsidiaries of Australian companies. Broadly, these rules will tax the mobile income of a multinational group as if it was earned in Australia. The way in which these rules operate means that they only apply to Australian based multinationals, such as Newcrest.</p>

As well as being robust, these rules are generally very complex, subjective and time consuming to comply with. Newcrest already spends a significant amount of time and money complying with Australian taxation legislation and does not consider any further legislation in is warranted. This view as to the adequacy of these laws is one shared by ATO Second Commissioner Andrew Mills who stated to Senate Estimates: *“because of the changes over recent years we have probably the strongest anti-avoidance and transfer pricing rules in the world.”*

Newcrest submit that the current laws are adequate and that no further amendments are required. In fact, Newcrest would be disappointed if an outcome of this inquiry was the introduction of additional tax laws that further increase compliance costs and complexity. As we have outlined below, in response to (b) and (c), our view that the focus of work in this area should be on better coordination, communication and exchange of information between revenue authorities and note that this has already commenced through the OECD/G20 Base Erosion and Profit Shifting (BEPS) process.

- b) *any need for greater transparency to deter tax avoidance and provide assurance that all companies are complying fully with Australia’s tax laws; and*
- c) *the opportunities to collaborate internationally to address the problem.*

Newcrest supports appropriate transparency in relation to taxation payments. Newcrest is a participant in the Extractive Industries Transparency Initiative (EITI) and discloses taxation and royalty payments by asset as part of its annual Sustainability Report.

Newcrest is, however, concerned with the current approach of the Australian government to transparency, which is to publish cash tax payments made by corporate entities and the accounting revenue earned in the same period. Newcrest expects that this information, which is to be published by the ATO on an annual basis, has a high risk of being misused or misinterpreted by some parties and that it will unnecessarily erode public confidence in the corporate tax system, as well as needlessly damage the reputations of companies who are fully compliant with Australia’s tax law.

Newcrest consider that a more appropriate approach to “transparency” is through greater international revenue authority communication and increased sharing of corporate taxation information between such authorities in a standard form. Newcrest considers this will allow revenue authorities to more effectively and efficiently analyse and interpret the taxation arrangement of multinational groups.

We note that this approach is one already supported by the Australian Taxation Office and Australian Treasury through:

1. The significant increase in the number of Taxation Information Exchange Agreements (TIEA) over the last four years. Australia now has TIEAs or double tax agreements with in excess of 100 countries – including TIEAs with many countries listed in the TJN report as “tax secrecy jurisdictions”; and
2. Support of the OECD initiative of a Common Reporting Standard, including the requirement to prepare country-by-country reporting in relation to transfer pricing arrangements.

In summary, Newcrest submit that the focus of transparency and global coordination should be of ensuring the free flow of standardised, consistent information between revenue authorities to ensure that they are well positioned to understand multinational entities’ global arrangements in an efficient and effective way.

Whilst Newcrest demonstrably supports taxation transparency as evidenced through our participation in EITI and our annual Sustainability Report, we do not consider that the information that will be published by the ATO will provide any assurance of compliance with taxation laws. We anticipate that it will be subject to uninformed analysis and misinterpretation that will lead to further erosion of public confidence in the Australian corporate tax system.

SECTION THREE – INFORMATION ON TAX AVOIDANCE STRATEGIES

The invitation to make a submission to the Senate Inquiry specifically requested that Newcrest include in its submission *“information on your [Newcrest’s] tax arrangements especially the company’s effective tax rates and the strategies it uses to minimise the amount paid in taxes”*

In relation to this request, Newcrest makes the following points:

- All Australian and foreign operations of Newcrest are held by companies that are resident in the jurisdiction in which they operate – none are held by branches or hybrid entities.
- All funding of Newcrest operations and projects occurs by way of ordinary debt and equity – none of Newcrest’s operations or projects is funded by way of hybrid debt or equity.
- Newcrest does not have any arrangements in place that are consistent with the “common jurisdiction profit shifting mechanisms” published by the Parliamentary Library in relation to this inquiry, being “related party sale of products and services” and “charging of royalties for intellectual property (IP) rights”¹.
- As outlined in Section One, all Newcrest’s borrowings in Australia are from unrelated, commercial banks and it therefore Newcrest does not artificially inflate its debt in Australia to reduce Australian taxation.
- Even if Newcrest did engage in the abovementioned approaches to reducing its tax liability in Australia, the controlled foreign company rules – described in Section Two – would eliminate any tax benefit that would otherwise arise by taxing the beneficiary as if it was an Australian resident.

Newcrest’s taxation payment profile over the last decade has been lower than would be anticipated by reference to its reported accounting profit due entirely to the application of ordinary Australian taxation rules, including:

1. Timing Differences – Timing differences associated with depreciation and amortisation can be significant for mining companies. During the last decade Newcrest developed and operated four significant underground mines, all of which required significant upfront capital expenditure;
2. Tax Losses – Taxes paid in Australia over the period have been reduced by the application and utilisation of historic taxation losses; and
3. Research and Development Tax Incentive claims – a number of claims were made over the last decade in relation to Newcrest’s ongoing development of innovative underground mines, which have been comprehensively reviewed by Innovation Australia and the Australian Taxation Office.

Newcrest’s view that it is a low risk taxpayer and that its taxation outcomes can be explained by reference to the application of ordinary Australian taxation rules, is consistent with the Australian Taxation Office assessment of Newcrest’s taxation risk in its most recently completed client risk review.

¹A list of common corporation and taxation avoidance and minimisation practices was listed by the Parliamentary Library - http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2014/December/Senate_inquiry_into_corporate_tax_avoidance (viewed 6 January 2015)