

## Submission

### SENATE INQUIRY INTO CORPORATE TAX AVOIDANCE AND MINIMISATION

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BHP Billiton is a leading diversified resources company with a workforce comprising approximately 123,800 employees and contractors, working at 130 locations in 26 countries. We are among the world's top producers of major commodities including iron ore, metallurgical and energy coal, conventional and unconventional oil and gas, copper, aluminium, manganese, uranium, nickel and silver.<sup>1</sup> Our operations supply customers and meet the resources demands of developed and emerging economies around the world. It is a proudly Australian company, with a history dating back to 1885, and headquarters that have always been in Australia.

BHP Billiton understands that the operation of the resources sector in particular countries is a privilege, and we view our taxation commitments as an important part of our obligations to our host countries. We have a strong commitment to transparency and publish detailed information on our tax payments in our annual Sustainability Report. We were recently recognised by Transparency International as the most transparent mining company in the world.

The Senate Inquiry's (Inquiry) deliberations are taking place amid an important international debate on tax. In particular, there are concerns that the international tax system is under pressure from the evolution of global business models used by some multinational companies. As demonstrated by work undertaken by the Organisation for Economic Co-operation and Development (OECD), issues around base erosion and profit shifting (BEPS) are complex and multi-layered, requiring a carefully considered and coherent package of measures to address them.

BHP Billiton welcomes the opportunity to provide a submission to the Inquiry. BHP Billiton's submission responds to the Inquiry's invitation by outlining:

- BHP Billiton's position on the key objectives of tax policy design
- Opportunities for governments to collaborate internationally to address BEPS
- BHP Billiton's views on the adequacy of Australia's current laws
- The role of tax transparency and reporting in deterring tax avoidance and providing assurance that all companies are complying fully with tax laws
- Further information on BHP Billiton's effective tax rate and the location of BHP Billiton's subsidiaries, following recent reporting relating to tax arrangements of publicly listed Australian companies.

#### **BHP Billiton's position on the key objectives of tax policy design**

The way the tax system is designed in order to meet its role in funding government services and payments has a critical impact on economic outcomes. In this context, BHP Billiton considers that the following objectives should guide tax policy design:

- *Efficiency*: Tax settings should be efficient and support economic growth by minimising any potential distortions and impediments to investment.
- *Simplicity*: Tax settings should be as simple as possible in order to minimise administrative burden for business and promote effective compliance.

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<sup>1</sup> On 19 August 2014, BHP Billiton announced plans to create an independent global metals and mining company based on a selection of BHP Billiton's high-quality aluminium, coal, manganese, nickel and silver assets. A final Board decision on the proposed demerger will only be made once the necessary government, taxation, regulatory and other third party approvals are secured on satisfactory terms. Once the necessary approvals are in place, BHP Billiton shareholders will have the opportunity to vote on the proposed demerger.

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- *Stability*: Governments should promote stability by pursuing necessary changes through a coherent program of reform that is underpinned by a rigorous analysis of the problem, effective consultation and a thorough implementation plan.
- *Sustainability*: Tax reform should be undertaken with a view to ensuring that tax settings have a reasonable degree of flexibility to respond to changing economic, technological and other global developments.
- *Competitiveness*: The tax system should support Australia's international competitiveness.
- *Confidence*: The public should have trust that the tax system is transparent and has underlying integrity, delivering outcomes that balance equity and efficiency.

### **Opportunities for governments to collaborate internationally to address the problem**

With these objectives in mind, BHP Billiton supports multilateral efforts to develop effective approaches through the Base Erosion and Profit Shifting (BEPS) Action Plan being pursued by the Organisation for Economic Cooperation and Development (OECD) and supported by the G20 in relation to international tax reform. We believe this is the best way to avoid unilateral action by individual countries that may increase the likelihood of double taxation and increase business uncertainty. At a time of subdued global growth it is critical that unilateral action does not act as an impediment to cross border trade and investment, thereby placing further pressure on economic growth.

In assessing the merits of proposed actions to address BEPS, BHP Billiton believes the following principles should apply:

- Actions should not penalise companies for responding to national and international tax regimes put in place by governments with the aim of fostering local economic growth.
- Efforts to lift tax transparency through enhanced reporting must be easily captured, reported and understood while meeting the stated objective.
- Efforts to address base erosion and profit shifting should be internationally coordinated to avoid the possibility of both double taxation and non-taxation.
- New corporate tax measures should be prospective in their application.

Given the importance of realising a coherent multilateral framework for modernising the international tax system, BHP Billiton will continue to engage closely with the OECD on the BEPS Action Plan. The BEPS Action Plan is supported by the G20's stated goal under the Turkish Presidency in 2015, which includes monitoring the implementation of the 2014 deliverables, securing further progress on the actions covered by the BEPS Action Plan and encouraging bilateral and multilateral cooperation between tax authorities.

### **BHP Billiton's views on the adequacy of Australia's current laws**

As noted recently by the Commonwealth Treasury, Australia comes to the international policy debate with a comprehensive suite of laws to safeguard the integrity of Australia's corporate tax system. These laws include general anti-avoidance rules, specific anti-avoidance rules, transfer pricing, thin capitalisation and controlled foreign company rules. During 2013, Australia:

- strengthened its general anti-avoidance rules and specific anti-avoidance rules which are now considered amongst the most rigorous in the world; and
- made significant amendments to reinforce Australia's rigorous transfer pricing and thin capitalisation rules.

Australia's controlled foreign company rules aim to prevent erosion of the Australian tax base through shifting income to jurisdictions that do not impose tax or that impose tax at low rates. Together the rules act as a deterrent to taxpayers engaging in unacceptable corporate tax avoidance.

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As a significant payer of taxes in Australia, BHP Billiton's tax arrangements are subject to robust scrutiny. BHP Billiton has regular engagement with the Australian Taxation Office (ATO), including through BHP Billiton's participation in the pre-compliance review process, whereby BHP Billiton briefs the ATO on material transactions prior to lodging its income tax returns.

Like many other Australian companies, BHP Billiton applies for private rulings to obtain clarification on the application of complicated areas of Australian taxation law as they apply to its complex business and the ATO routinely audits BHP Billiton's tax positions.

### **Tax transparency and reporting in deterring tax avoidance**

BHP Billiton welcomes discussion on greater transparency amongst taxpayers to ensure that all taxpayers are complying with Australian and international taxation laws. BHP Billiton has developed its own Transparency Principles<sup>2</sup> and supports a number of transparency initiatives, evidenced by BHP Billiton's voluntary and active participation.

BHP Billiton is a founding signatory to the Extractive Industries Transparency Initiative (EITI) and a BHP Billiton executive is an active member of the EITI board. We participated in the recent Australian pilot and have also supported implementation of the EITI framework in other jurisdictions in which we operate. The voluntary tax and royalty disclosures on a country-by-country basis in BHP Billiton's annual Sustainability Report are consistent with our support for the EITI Standard. BHP Billiton's reporting is included at **Appendix A**.

Transparency International's 2014 *Transparency in Corporate Reporting: Assessing the World's Largest Companies* (TRAC) report evaluates the transparency of corporate reporting by the world's 124 largest publicly listed companies. The report assesses the disclosure practices of companies with respect to their anti-corruption programmes, company holdings and the disclosure of key financial information on a country-by-country basis. In this latest report, BHP Billiton ranks as the most transparent mining company and fourth overall in the world. Further, BHP Billiton is ranked in the top ten in the world in relation to country-by-country reporting and is the highest ranked Australian company in this area.

In further advancing tax transparency, it is important for governments to collaborate multilaterally to develop a standard transparency regime that captures the necessary information efficiently to ensure taxpayers are not burdened with unnecessary compliance costs.

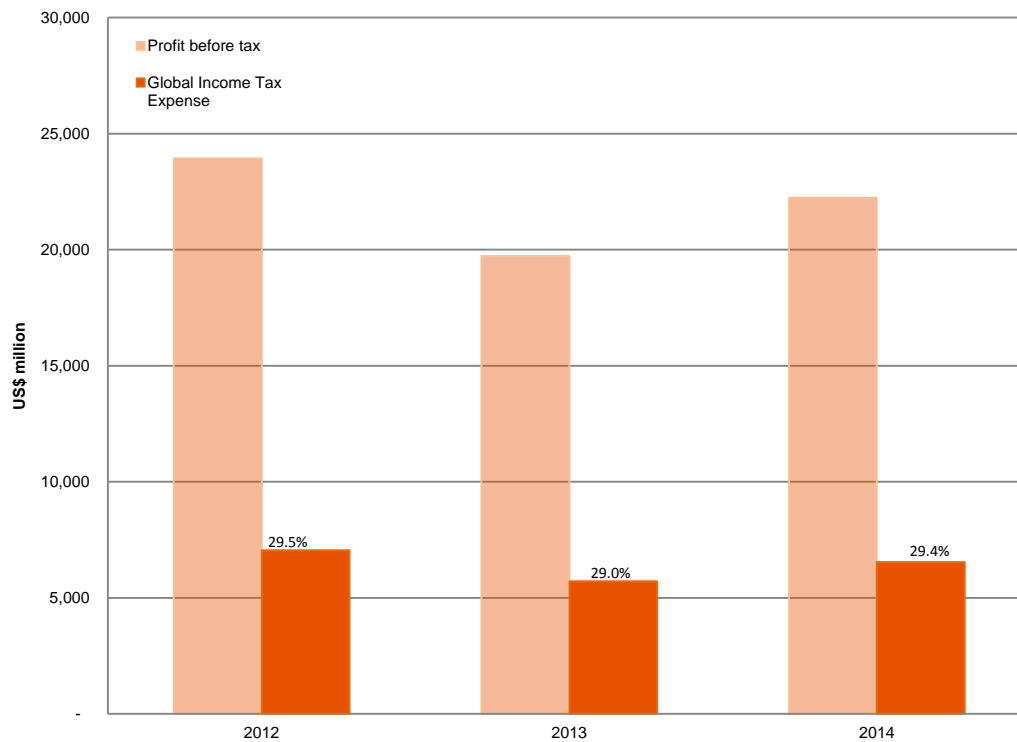
### **Further information on BHP Billiton's tax profile**

#### ***BHP Billiton's effective tax rate***

BHP Billiton pays significant amounts of income tax in accordance with the taxation laws applying in the jurisdictions in which we operate, including Australia. The chart below illustrates the global income tax expense and the global effective tax rate for income tax for the past three years.

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<sup>2</sup> See <http://www.bhpbilliton.com/home/society/operatingwithintegrity/Pages/BHP-Billiton-Revenue-Transparency-Principles.aspx>

**BHP Billiton Submission to the Senate Inquiry on Corporate Tax Avoidance and Minimisation****BHP Billiton Group - Global Income Tax Expense and Effective Tax Rate**

BHP Billiton's average global effective tax rate for the past three years is 29.3%. This accounts for the impact of currency exchange fluctuations, income earned outside of Australia and specifically legislated tax measures, such as the research and development concession.

**Appendix A** provides further information in relation to how much tax is paid by BHP Billiton and the calculation of the global effective tax rate for BHP Billiton.

### ***Location of BHP Billiton's subsidiaries***

BHP Billiton operates under a Dual Listed Company (DLC) structure, with two parent companies BHP Billiton Limited and BHP Billiton Plc operating as a single economic entity, run by a unified Board and management team, with headquarters in Australia.

As a large multinational company operating in countries around the world, both BHP Billiton Limited and BHP Billiton Plc have subsidiaries incorporated in different countries around the world.

Regardless of the location of subsidiaries, Australia's controlled foreign company rules, transfer pricing rules and general anti-avoidance rules collectively operate to prevent multinationals from obtaining an Australian tax advantage by operating through subsidiaries in jurisdictions that do not impose tax or that impose tax at lower rates than Australia.

BHP Billiton notes that a majority of so called "secrecy jurisdictions"<sup>3</sup> actually have double tax treaties with Australia which require the sharing of information or have tax information exchange agreements (TIEA) with Australia. TIEAs help each country by exchanging correct tax information relevant to the administration and enforcement of their respective domestic tax

<sup>3</sup> The Tax Justice Network defines a "Secrecy Jurisdiction" as

*Rather than say 'Country X is a secrecy jurisdiction,' however, we prefer to emphasise the concept of a secrecy spectrum (see Chart 1 below). The question of whether a location is a secrecy jurisdiction or not is largely a question of degree, and we leave it to others to decide. <<http://www.financialsecrecyindex.com/PDF/WhatsASecrecyJurisdiction.pdf>>*

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laws. The table below sets out the locations where BHP Billiton has subsidiaries in so called “secrecy jurisdictions”.

| Country                | Comments  |
|------------------------|---|
| Bermuda                | This country has a TIEA with Australia.   |
| Botswana               | There is no longer a commercial imperative for BHP Billiton to have subsidiaries in Botswana and these entities are now being liquidated.   |
| British Virgin Islands | This country has a TIEA with Australia.   |
| Cayman Islands         | This country has a TIEA with Australia.   |
| Cook Islands           | This country has a TIEA with Australia.<br><br>BHP Billiton does not have a company located in the Cook Islands although it has been erroneously reported by third parties to have one. |
| Guernsey               | This country has a TIEA with Australia.   |
| Hong Kong              | There is no longer a commercial imperative for BHP Billiton to have subsidiaries in Hong Kong and these entities are now being liquidated.  |
| Jersey                 | This country has a TIEA with Australia.   |
| Liberia                | This country has a TIEA with Australia.   |
| Malaysia               | This country has a double tax treaty with Australia.  |
| Panama                 | This entity is subject to tax in the United States.   |
| Philippines            | This country has a double tax treaty with Australia.  |
| Saint Kitts and Nevis  | This country has a TIEA with Australia.   |
| Saint Lucia            | This country has a TIEA with Australia.   |
| Singapore              | This country has a double tax treaty with Australia.  |
| Switzerland            | This country has a double tax treaty with Australia.  |

**BHP Billiton Submission to the Senate Inquiry on Corporate Tax Avoidance and Minimisation****Appendix A****BHP Billiton's country-by-country reporting of tax and royalty payments**

BHP Billiton makes significant tax and royalty payments to governments around the world. The table below sets out the tax and royalty payments borne by BHP Billiton on a country-by-country basis.<sup>4</sup>

| <b>Country</b>      | <b>BHP Billiton Group -<br/>Taxes borne in 2014<br/>(US\$ million)</b> | <b>BHP Billiton Group -<br/>Taxes borne in 2013<br/>(US\$ million)</b> | <b>BHP Billiton Group -<br/>Taxes borne in 2012<br/>(US\$ million)</b> |
|---------------------|--|--|--|
| Australia           | 8,051  | 9,189  | 9,113  |
| Chile               | 968  | 797  | 745  |
| South Africa        | 141  | 331  | 211  |
| United States       | 141  | 186  | 280  |
| Algeria             | 281  | 328  | 372  |
| Colombia            | 64   | 310  | 437  |
| Peru                | 18   | 272  | 264  |
| United Kingdom      | 29   | 135  | 115  |
| Canada              | 14   | 80   | 148  |
| Brazil              | 8  | 105  | 158  |
| Trinidad and Tobago | 76   | 64   | 119  |
| Pakistan            | 44   | 64   | 111  |
| Switzerland         | 23   | 23   | 41   |
| Singapore           | 26   | 10   | 12   |
| Other               | 4  | 21   | 15   |
| <b>TOTAL</b>        | <b>9,888</b>   | <b>11,915</b>  | <b>12,141</b>  |

Source: BHP Billiton 2014 Sustainability Report

<sup>4</sup> Taxes borne by BHP Billiton are reported on a 100 per cent basis for subsidiaries and equity share basis for joint operations. Taxes borne primarily comprises income tax and royalty-related taxes paid, royalties paid in-kind, customs and excise payments, payroll taxes paid, payments of Fringe Benefits Tax and production-based royalties accrued, which approximate cash payments. Ancillary payments, such as licences, visas, sales taxes, stamp duty payment and land tax, are excluded. Taxes borne by BHP Billiton's joint ventures and associates are not included in the amounts above.

### BHP Billiton's global and Australian tax expense amounts and effective tax rate

The table below elaborates on the global income tax expense and explains the reconciling adjustments to BHP Billiton's effective tax rate over the past three years.

|   | FY2012             | FY2013             | FY2014             | Average            |
|---|--------------------|--------------------|--------------------|--------------------|
| Profit before tax (US\$ millions)                                     | 23,932             | 19,726             | 22,236             | 21,965             |
| Income tax on profit at standard rate of 30%                          | 30.0% 7,180        | 30.0% 5,918        | 30.0% 6,671        | 30.0% 6,589        |
| <b>Adjustments</b>  |                    |                    |                    |                    |
| Tax on remitted and unremitted foreign earnings                       | 0.8% 181           | 0.6% 109           | 0.8% 169           | 0.7% 153           |
| Non deductible depreciation, amortisation and exploration expenditure | 0.6% 150           | 1.1% 222           | 0.4% 84            | 0.7% 152           |
| Non tax effected operating losses and capital gains                   | 0.7% 169           | -0.3% (56)         | 0.1% 28            | 0.2% 47            |
| Tax rate changes  | 0.0% 0             | 0.3% 68            | 0.1% 20            | 0.1% 29            |
| Tax rate differential on foreign income                               | -1.2% (287)        | -0.4% (74)         | 0.1% 15            | -0.5% (115)        |
| Exchange variations and other translation adjustments                 | 1.4% 347           | 1.2% 245           | -0.1% (24)         | 0.9% 189           |
| Initial recognition of tax assets                                     | -0.6% (136)        | -1.9% (370)        | -0.2% (45)         | -0.9% (184)        |
| Amounts (over) / under provided in prior years                        | 0.3% 72            | -0.2% (36)         | -0.4% (81)         | -0.1% (15)         |
| Investment & Development Allowance                                    | -0.9% (224)        | -1.3% (260)        | -1.0% (225)        | -1.1% (236)        |
| Tax effect of share of profits of equity accounted investments        | -2.3% (561)        | -1.7% (343)        | -1.6% (359)        | -1.9% (421)        |
| Other   | 0.7% 162           | 1.5% 291           | 1.3% 285           | 1.1% 246           |
| <b>Income Tax Expense</b>   | <b>29.5% 7,053</b> | <b>29.0% 5,714</b> | <b>29.4% 6,538</b> | <b>29.3% 6,435</b> |
| Royalty related taxation (net of income tax benefit)                  | 1.1% 262           | 6.0% 1,192         | 2.1% 474           | 3% 643             |
| <b>Total Taxation Expense</b>   | <b>30.6% 7,315</b> | <b>35.0% 6,906</b> | <b>31.5% 7,012</b> | <b>32% 7,077</b>   |

Source: BHP Billiton 2014 Annual Report

When considering BHP Billiton's reported effective tax rate, it is important to note the following:

**Key differences between BHP Billiton's effective tax rate and the Australian corporate tax rate**

The key differences between BHP Billiton's effective tax rate and the Australian corporate tax rate are disclosed in BHP Billiton's financial statements each year and relate to a range of accounting standard and tax law requirements. These are further explained below:

| Difference  | Description   |
|---|---|
| Tax on remitted and unremitted foreign earnings                       | This line typically represents present and future dividend withholding tax which has been paid or will be paid when the earnings of a subsidiary in a foreign location are repatriated by way of a dividend.  |
| Non-deductible depreciation, amortisation and exploration expenditure | This line typically represents charges to the accounting statement of financial performance in relation to non-current assets for which there is no corresponding income tax deduction in the current year and no income tax deduction is reasonably expected in the future.  |
| Non tax effected operating losses and capital gains                   | The tax law typically allows taxpayers to carry forward an operating loss or capital loss to offset future income or gains. For accounting purposes, a deferred tax asset is recorded for that future benefit. The value at which that deferred tax asset is recorded will reflect the likelihood of that loss being utilised and may change from one reporting period to the next. Such changes are reflected in this line.                |
| Tax rate changes  | Deferred tax assets and liabilities are recorded at the prevailing tax rate. Where there is a change in tax rate, the value of deferred tax assets and liabilities change. Such changes are reflected in this line.   |
| Tax rate differential on foreign income                               | Differences between the Australian corporate tax rate of 30% and the tax rate applying in the jurisdiction in which that income is taxed are reflected in this line.  |
| Exchange variations and other translation adjustments                 | Tax is typically paid in local currency whereas BHP Billiton prepares its financial statements in US dollars. In some jurisdictions BHP Billiton is also required to calculate its net income in the local currency. Currency exchange fluctuations which relate to income taxes are reflected in this line.  |
| Initial recognition of tax assets                                     | The accounting standards prescribe if and when certain tax assets are to be recognised. In cases where the accounting standard require tax assets to be initially recognised by recording an amount to income tax expense, it will be reflected in this line.   |
| Amounts (over) / under provided in prior years                        | Any changes to a tax position which relates to and was reported in a prior year are reflected in this line.   |
| Investment & Development Allowance                                    | This line typically represents the impact of concessions which are designed to encourage investment, such as for research and development.  |
| Tax effect of share of profits of equity accounted investments        | BHP Billiton's share of the results of entities in which it has a beneficial but non-controlling interest are equity accounted for in its financial statements. Equity accounting results in BHP Billiton's share of an investment's profit after tax being included in BHP Billiton's profit before tax. The effect of BHP Billiton therefore not recording an amount in its income tax expense for that income is reflected in this line. |
| Royalty related taxation  | This includes the Petroleum Resource Rent Tax and Minerals Resource Rent Tax. The accounting standards require both of these taxes to be accounted for as income taxes.   |



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### ***BHP Billiton's financial results are reported in US dollars***

US dollars are the dominant currency in which BHP Billiton conducts its business.

From 1 July 2011 all eligible BHP Billiton Australian entities have also adopted US dollars as the currency in which tax liabilities are measured by a functional currency election under Australian taxation law. Practically, this means that income taxes are now calculated in US dollars and on a consistent basis to accounting profit. Income tax liabilities are converted to Australian dollars only for the purpose of making tax payments in Australian dollars.

Prior to 1 July 2011, income taxes were calculated in Australian dollars and then converted to US dollars for reporting purposes. This gave rise to currency exchange rate fluctuations in the reporting of tax balances in the financial statements as the conversion to US dollars was on a different basis to accounting profit.

When considering BHP Billiton's effective tax rate prior to 1 July 2011, it is important to understand and take into account the impact currency exchange rate fluctuations have on its reported effective tax rate and the inability to make direct comparisons between BHP Billiton's reported effective tax rate before and after 1 July 2011.

### ***BHP Billiton's financial results are presented on a global basis***

BHP Billiton financial statements present a consolidated view of the results of its operations both in and outside Australia. BHP Billiton's effective tax rate reflects the different tax rates and taxation regimes in each of those countries.