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Inquiry into Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015

Shell welcomes the opportunity to provide this submission in relation to the Inquiry into Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015 ('the Inquiry').

1. Background – About Shell

Shell is a global group of energy and petrochemical companies, with its headquarters in The Hague, the Netherlands. The group operates in over 70 countries around the world and employs around 94,000 people.

In April 2015, the Boards of Royal Dutch Shell plc and BG Group plc agreed the terms of a proposed merger. The parties are targeting completion of the transaction in early 2016 and are currently seeking regulatory approvals in a number of jurisdictions. Subject to obtaining these approvals, the companies' shareholders will then be asked to support the proposal.

Shell in Australia

Shell has been in Australia since 1901 and the Australian business forms an important part of Shell's global natural gas business. Historically, our significant investments in Australia spanned across both the downstream and upstream sectors.

In 2014 Shell sold its downstream refining, marketing and retail distribution operations to Vitol, and our business is now largely focused within the upstream sector – although Shell continues to supply aviation fuels and lubricants.

Shell is one of the largest investors in Australia with plans to invest approximately \$30-50 billion of capital within the current decade. We are also the second largest holder of oil and gas resources in Australia and uniquely positioned as one of the nation's largest integrated energy companies.

Our major investments in key Australian LNG projects include the:

- Prelude Floating LNG project (67.5% equity);
- Gorgon Joint Venture (25% equity);
- North West Shelf Venture (16.67% equity);
- Browse Joint Venture (27% equity); and
- Sunrise Joint Venture (26.6% equity).

In 2010 Shell and PetroChina jointly acquired Arrow Energy Limited, a Queensland coal seam gas company with resources in the Surat and Bowen basins. Shell and PetroChina each hold 50% of Arrow.

As the group's major projects in Australia come online, they will generate significant additional economic benefit for Australia.

Shell is well positioned to bring both deep Australian and international experience to business taxation discussions that provide for equitable, transparent outcomes and aid in making Australia attractive for foreign investment.

Shell feels that the tax system will play a pivotal role for Australia to fulfil its growth potential and consistently advocates for a stable and competitive fiscal regime as an important enabler for Australia in competing for investment in global markets. Further, the tax system should strive to be neutral so that decisions are made on their economic merits and not for tax reasons.

2. General comments on combating multinational tax avoidance

Shell supports a transparent and coordinated approach to dealing with Base Erosion and Profit Shifting ('BEPS') concerns, including multinational tax avoidance. Proposed solutions should be targeted and proportional and consistent with the OECD's recommendations for BEPS.

A distinction needs to be made between illegal activities and lawful methods of tax planning, aligned with commercial and economic activities. Tax abuse should be addressed as part of a tax regime based on the consistent and predictable application of tax rules that are principles-based.

Principles and rules should be transparent, proportionate, administrable, fair, reasonably certain, conducive to timely determination of results and avoid double taxation of profits or non-deduction of costs in cross-border situations.

Shell recognises and respects the right of the Australian Government to set and adjust taxation policy and legislation, however we see it as very important that the long term nature of investments in energy projects is recognised as part of that process.

In particular, fiscal stability is critical for investors in LNG projects as they require billions of dollars of upfront capital investment and usually more than a decade for investors to make a return on this investment. Unilateral actions as well as disproportionate solutions are likely to result in double taxation of multinational enterprises. Such double taxation could negatively impact investment flows, foreign direct investment, jobs and economic growth for the countries and regions involved.

Therefore, we urge restraint in unilateral and non-coordinated legislative actions that may impact fiscal stability. In this regard we note the OECD released its final package of BEPS measures on 5th October 2015, including Action 7 (permanent establishments) and Action 13 (transfer pricing documentation and reporting). It is important that these measures are fully considered in terms of compatibility with the Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015.

Further, we note the following in relation to the Bill:

Schedule 2 - Multinational anti-avoidance

The Bill does not resolve the issue of how the deemed profit of a permanent establishment will be calculated where the multinational anti-avoidance law applies. Urgent guidance is required on this issue to provide sufficient certainty for affected multinationals with Q1, 2016 reporting requirements in relation to the tax risks generated by the legislation.

Schedule 4 - Country-by-country reporting (CbC)

Lodgement of the CbC report and the transfer pricing master file will need to meet the Australian implementation timeline for these measures, which may be running ahead of the parent company's home country implementation timeline. Such misalignment may result in an additional administrative burden for the Australian entity and inconsistent reporting requirements upon implementation of equivalent measures in the foreign parent's jurisdiction.

3. Other comments

Shell looks forward to continuing an open and constructive dialogue on the matters being considered by the Inquiry.

We would be pleased to provide clarification or further details of any of the matters discussed in this submission at any time.

Yours sincerely

Andrew Smith
Shell Australia Country Chair