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11 May 2020

Senate Finance and Public Administration Legislation Committee
Parliament House Canberra
Submitted via fpa.sen@aph.gov.au

Submission to the Public Governance, Performance and Accountability Amendment (Tax Transparency in Procurement and Grants) Bill 2019

Dear Secretary,

Re: Public Governance, Performance and Accountability Amendment (Tax Transparency in Procurement and Grants) Bill 2019

Publish What You Pay (PWYP) Australia welcomes the opportunity to make a submission to the inquiry into Tax Transparency in Procurement and Grants Bill 2019.

PWYP Australia is a coalition of humanitarian, faith-based, environmental, anti-corruption, research and union organisations campaigning for greater transparency and accountability in the extractive industries. PWYP Australia works with the global Publish What You Pay coalition, a network of over 700 member organisations in more than 50 countries around the world, united in their call for an open and accountable extractive sector, so that oil, gas and mining revenues improve the lives of women, men and youth in resource-rich countries.

This submission supports the amendments proposed to impose disclosure and reporting requirements on government agencies and Commonwealth entities entering into contracts with companies or providing grants to persons or companies that are, or have related entities, domiciled in prescribed tax havens. In this submission, PWYP Australia focuses on the oil, gas and mining sectors and urges the Commonwealth to take a stronger stance on Australian companies, ASX listed companies and multinationals that are incorporated in tax havens. This includes the development of a free public beneficial ownership register.



The OECD identified the extractive industries as the world's most corrupt economic sector.¹ The High Level Panel on Illicit Financial Flows from Africa found a clear relationship between countries that are highly dependent on extractive industries and the incidence of [illicit financial flows].² The complexity of the challenges faced in increasing the transparency of the extractives sector means it requires legislative change to fully address.

The starting point for tackling corruption, poor governance and tax non-compliance in the extractives sector is transparency. PWYP Australia welcomes the recent steps Australia has taken to begin addressing these issues, in particular the Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015 which introduced Country by Country Reporting as outlined in Action 13 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Plan, and joining the Open Government Partnership (OGP), which included commitments aimed at increasing transparency, such as the Extractive Industry Transparency Initiative (EITI), Beneficial Ownership, and Open Contracting.

PWYP Australia believes that the opaque nature of the extractives sector in Australia is contributing to the difficulty of ensuring that the Australian public is getting a good deal from the extraction of its natural resources. Greater transparency on the use of tax havens for Australian companies, ASX listed companies and multinational companies doing business in Australia is urgently needed.

The Federal Government should consider a stronger position on awarding contracts or providing financial assistance to any company that is incorporated in a tax haven. Significantly, three European nations - France, Poland and Denmark - as part of their COVID-19 response have ruled out providing financial stimulus to companies incorporated in tax havens.³

Both the Australian Government and industry promote Australian extractives companies as leaders of good business practice and investment and yet Australian extractives companies operating around the world routinely face allegations of corruption and tax avoidance, but of environmental damage and operating without social license. PWYP's research in 2017 found at least 7 ASX mining companies

¹ Foreign Bribery Report, 2014, <http://www.oecd.org/daf/anti-bribery/scale-of-international-bribery-laid-bare-by-new-oecd-report.htm>

² https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf, page 67

³ <https://thehill.com/policy/finance/494297-european-countries-exclude-companies-registered-in-offshore-tax-havens-from>



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operating in known tax havens.⁴ Furthermore, big multinational extractive companies such as Glencore and Exxon are also incorporated in tax havens. This allows these companies to minimise their payment of taxes through channeling funds into lower tax jurisdictions effectively cheating the Australian government and citizens of revenue and much needed investment in services and infrastructure. The IMF estimates that governments lose around the world lose between \$500 billion and \$600 billion USD in tax revenue through companies using tax havens.⁵ Publish What You Pay member, Oxfam Australia found that Switzerland, Singapore and The Netherlands were the top three offshore financial centres used by multinationals operating in Australia.⁶

PWYP Australia believes the best way to address this is through a public register of beneficial ownership. The 2016 OECD report into extractive industries writes about the importance of a public beneficial ownership register as countries look to improve their tax transparency mechanisms. The report states:

'transparency measures both in host and home governments may fail to adequately reflect the increasing complexity of corruption patterns, which often rely on multi-layered structures across various jurisdictions involving shell companies and corporate vehicles used to channel or disguise corrupt payments and distance the corrupt agent from the crime. The lack of access to adequate information on these corporate structures, including on beneficial ownership information, ranks among the greatest corruption risk factors in relation with transparency measures. Indeed, effectively detecting risks of corruption and money laundering through corporate vehicles requires capacity from the state to trace and identify the beneficial owners exercising ultimate effective control over a legal entity or on whose behalf a transaction is being conducted'.⁷

A free public beneficial ownership register has been established in the UK, and Norway and the Netherlands are currently implementing public registers in their countries. A commitment by the Commonwealth Government to establish a register was included in the Australian Open Government Partnership National Action Plan 2016 to 2018, though this commitment is yet to be implemented.

⁴ <https://www.pwyp.org.au/abundant-resources-absent-data>

⁵ <https://www.imf.org/external/pubs/ft/fandd/2019/09/tackling-global-tax-havens-shaxon.htm>

⁶ <https://www.oxfam.org.au/inequality/worlds-worst-corporate-tax-havens/>

⁷ <http://www.oecd.org/dev/Corruption-in-the-extractive-value-chain.pdf>



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Open Ownership is an international organisation that works to increase beneficial ownership transparency across the world by making it easier to access high-quality and connected data about who owns, controls and benefits from companies. They have produced a guide for governments on how to introduce beneficial ownership registers which would support the Commonwealth Government in developing such a scheme.⁸

Please contact me at any time to discuss the contents of this submission.

Yours sincerely,

Clancy Moore
National Director
Publish What You Pay Australia

⁸ <https://www.openownership.org/guide/>