

# Is Exxon Paying a Fair Share of Tax in Australia?

Exxon has generated billions in revenue from increasing production and rising domestic gas prices, but has not paid a cent in corporate income tax in Australia in the last two years and possibly longer.

The American multinational -the largest publicly traded oil company in the world- is one of Australia's largest oil and gas producers and has been operating in Australia since 1895. Exxon has stated that 2016 was the highest gas production year ever from the Longford Plants that supply 19% of east coast demand.<sup>1</sup> Exxon is the operator of the Longford Plants and the gas fields which supply them and holds a 50% interest in both. This highest-ever production has occurred while domestic gas prices have skyrocketed.

ExxonMobil, like Chevron, appears to have used extensive high-interest related party loans and other tricks to artificially reduce tax payments in Australia. However, Exxon has been even more secretive than Chevron. ExxonMobil Australia Pty Ltd, the primary Australian subsidiary, has failed to disclose key elements of its corporate structure in Australia in its annual report filed with the Australian Securities & Investments Commission (ASIC) and when directly asked by the Senate Inquiry into Corporate Tax Avoidance.

Exxon's primary Australian company is directly owned by a shell company in the Netherlands and the Dutch company is owned by another subsidiary in the Bahamas. In effect, Exxon's entire Australian operations are owned through the Bahamas. This appears to be a Caribbean variation of the aggressive tax-minimisation

scheme commonly known as the "Double Irish with a Dutch Sandwich".

Leaked documents have revealed the Exxon has at least 575 companies incorporated in the Bahamas with names beginning with ExxonMobil, Esso, Exxon and Mobil. ExxonMobil Corporation's US filings reveal that the multinational has US\$54 billion stashed offshore and that the Australian Tax Office (ATO) has not approved Exxon's tax filings for nearly a decade.<sup>2</sup>

How much tax revenue has Australia lost to the Netherlands, the Bahamas or other offshore tax and corruption havens? How much will we lose in the future unless Exxon is forced to fully disclose its corporate structure and global payments to governments?

**"EXXON'S PRIMARY AUSTRALIAN COMPANY IS DIRECTLY OWNED BY A SHELL COMPANY IN THE NETHERLANDS AND THE DUTCH COMPANY IS OWNED BY ANOTHER SUBSIDIARY IN THE BAHAMAS."**

1. ExxonMobil Australia Pty Ltd, Annual Report for the period ended 31 December 2016, p.1, Directors' Report. As obtained from ASIC.

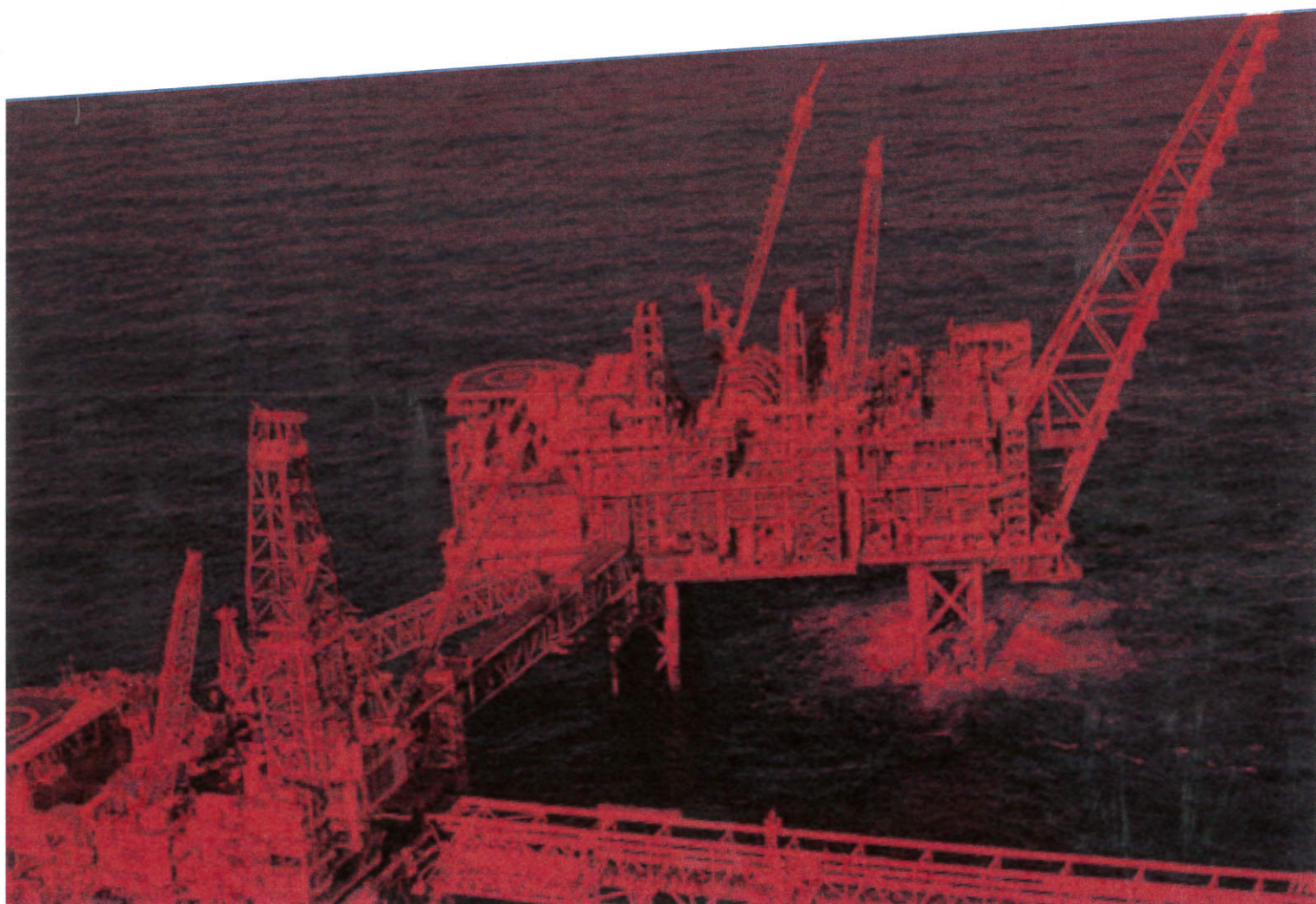
2. Exxon Mobil Corporation, Form 10-K, pp.101-102. <https://www.sec.gov/Archives/edgar/data/34088/000003408817000017/xom10k2016.htm>



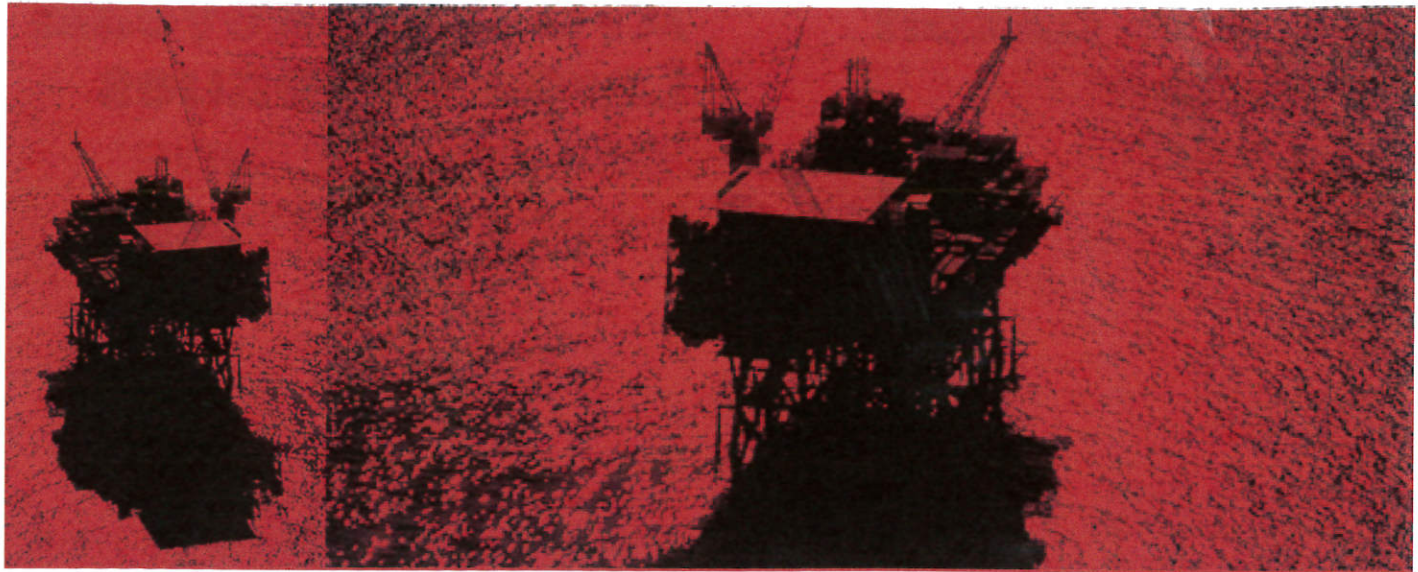


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The Dutch company registry shows that ExxonMobil Australia Holdings B.V. is 100% owned by ExxonMobil Asia Pacific Holding Limited.<sup>13</sup> This company is registered at the same office in the Netherlands but does not appear to make any substantial filings. A company profile reveals that this is a foreign company that was incorporated in the Bahamas in January 2000.<sup>14</sup> The Dutch entity is the local branch of the Bahamas based parent company. This means that Exxon's entire Australian operations are owned through a company in the Bahamas, via the Netherlands.

This Bahamas company shows up in the International Consortium of Investigative Journalists' (ICIJ), Offshore Leaks database.<sup>15</sup> The ICIJ are responsible for recent Paradise Papers leaks, the Panama Papers and other leaks which have exposed the scale of tax dodging and corruption through tax havens like the Bahamas. This Exxon company, and over 1,400 other entities in the Bahamas, has Harry B. Sands, Lobosky -a Bahamas law firm- as an intermediary.<sup>16</sup>

A search of the ICIJ offshore database reveals 354 companies incorporated in the Bahamas beginning with the name ExxonMobil.<sup>17</sup> This list of companies includes two others with apparent connections to Australia, ExxonMobil Exploration and Production Australia (CBM) Limited and

ExxonMobil Exploration New Resources Australia Limited.<sup>18</sup> There are another 141 companies in the Bahamas beginning with Esso, 67 companies beginning with Exxon another 13 beginning with Mobil. That is a total of at least 575 Exxon-related companies registered in the Bahamas.

While Exxon has denied that it uses the Bahamas to avoid taxes in other countries, James Henry, a senior adviser to the Tax Justice Network and former chief economist of McKinsey & Co., says that "operating in the Bahamas has precisely that effect. ...the Bahamas also offers strict financial secrecy and zero corporate taxes, which are the primary reasons to do business there...."<sup>19</sup>

**"THERE IS A  
TOTAL OF AT  
LEAST 575  
EXXON-RELATED  
COMPANIES  
REGISTERED IN  
THE BAHAMAS."**

11. Ibid, p.2, Income statement and p.8, Note 7, Financial income and expense.

12. Ibid, p.6, Note 4, Non-current liabilities.

13. Group relationship information obtained from the Dutch corporate registry on 19 November 2017.

14. Company profile obtained from the Dutch corporate registry on 30 November 2017.

15. <https://offshoreleaks.icij.org/nodes/20101569>

16. Ibid.

17. <https://offshoreleaks.icij.org/search?utf8=%E2%9C%93&q=exxonmobil&c=&j=&e=&commit=Search>

18. <https://offshoreleaks.icij.org/nodes/20162343> and <https://offshoreleaks.icij.org/nodes/20121677>

19. Ana Swanson, 28 December 2016, The Washington Post, "Why Trump's Secretary of State pick shows up in leaked offshore documents". [https://www.washingtonpost.com/news/wonk/wp/2016/12/28/why-trumps-secretary-of-state-pick-shows-up-in-leaked-offshore-documents/?utm\\_term=.d55497fbba31](https://www.washingtonpost.com/news/wonk/wp/2016/12/28/why-trumps-secretary-of-state-pick-shows-up-in-leaked-offshore-documents/?utm_term=.d55497fbba31)



# Why has Exxon hidden the ownership of the Australian business?

ExxonMobil Australia Pty Ltd is the primary Australian entity and is required to file annual reports with ASIC. Like the reports of many other multinationals, Exxon is not required to comply with Australian accounting standards and disclosure is severely limited despite the huge scale of corporate operations.

The immediate owner of the Australian company is not disclosed in its annual report (only the ultimate parent Exxon Mobil Corporation).<sup>3</sup> However, an ASIC company extract reveals that the shares are held by ExxonMobil Australia Holdings B.V. in the Netherlands.<sup>4</sup> A search on the Dutch Company Registry website produces hundreds of companies containing the name "ExxonMobil".<sup>5</sup> As appears to be the case with ExxonMobil Australia Holdings B.V., the vast majority of these companies are likely to have no employees and only exist on paper. The Dutch company was created in 2008, owns 100% of the Australian entity and "is a 100% indirectly owned subsidiary of Exxon Mobil Corporation...."<sup>6</sup>

There was no mention of the Dutch ownership in Exxon's submission to the Senate Inquiry on Corporate Tax Avoidance in July 2015 when specifically asked to report on related party transactions with operations in foreign jurisdictions.<sup>7</sup> However, the submission mentioned "a US dollar denominated debt with an affiliate incorporated in the Bahamas (interest payments on this loan were \$23.5 million in 2014) and a cash management facility with an affiliate in Singapore."<sup>8</sup> The submission, while clearly leaving out significant details, did reveal that the ATO was "currently reviewing our international related party financial dealings."<sup>9</sup>

The Dutch company that owns the Australian company appears to have no other business other than holding the shares of the Australian company which were valued at over US\$8.4 billion at the end of 2015.<sup>10</sup> The company made a loss of US\$60 million, which was made up entirely (excluding US\$25,000 in general expenses) of interest payments.<sup>11</sup> Presumably this interest was from the US\$4.1 billion in long term debt in a US dollar "denominated interest bearing loan with a group company. The term loan facilities bear an interest rate based on the London Interbank Offered Rate (LIBOR) for USD, plus a spread."<sup>12</sup> There is no mention of which group company or where or what the spread might be. There is a good chance that the loan originates with a group company in the Bahamas, as is the case with some of the related Exxon subsidiaries in Singapore (see below).

**"THERE WAS NO MENTION OF THE DUTCH OWNERSHIP IN EXXON'S SUBMISSION TO THE SENATE INQUIRY ON CORPORATE TAX AVOIDANCE IN JULY 2015..."**

3. ExxonMobil Australia Pty Ltd, Annual Report for the period ended 31 December 2016, p.42, Note 22 states, "The ultimate Australian parent entity for the consolidated group is ExxonMobil Australia Pty Ltd. The ultimate parent entity is Exxon Mobil Corporation (incorporated in the USA) which at 31 December 2016 owns indirectly 100% of the issues ordinary shares of ExxonMobil Australia Pty Ltd."

4. Current Company Extract for ExxonMobil Australia Pty Ltd, obtained from ASIC on 22 November 2017. ExxonMobil Australia Holding B.V. in the Netherlands is listed as the only shareholder.

5. <https://www.kvk.nl/zoeken/#!zoeken&q=ExxonMobil&index=4&site=kvk2014&start=240> (search conducted 30 November 2017, produced 251 results)

6. p.3 and p.6. As obtained from the Dutch Corporate Registry ([www.kvk.nl](http://www.kvk.nl)).

7. ExxonMobil Australia Pty Ltd, 29 July 2015, Submission 116 to the Senate Inquiry into Corporate Tax Avoidance.

8. Ibid., p.4.

9. Ibid.

10. ExxonMobil Australia Holding B.V., Financial Report 2015, p.6 Note 1, Financial assets.



44. Ibid.



## What is Exxon hiding in its US filings?

Exxon's 2016 annual report (10-K) filed with the US Securities and Exchange Commission reveals that tax filings in Australia for the years 2008 – 2016 remain under investigation.<sup>20</sup> That suggests that the ATO has not approved Exxon tax filings for a decade.

The 2016 annual report also reveals that Exxon has "[US]\$54 billion of indefinitely reinvested, undistributed earnings from subsidiary companies outside the U.S."<sup>21</sup> Essentially this means that this vast some of cash is stashed offshore, perhaps in the Bahamas, and has not been subject to US taxes.<sup>22</sup>

ExxonMobil Corporation's reports that total revenue from oil and gas production in Australia/Oceania (which also includes PNG) was US\$1.9 billion in 2016.<sup>23</sup> This was 5% of Exxon's US\$41 billion in revenue from global production.<sup>24</sup>

Production costs in Australia were 29% of revenue, which was significantly lower than the global average of 36% and 54% in the US.<sup>25</sup>

Total earnings from oil and gas production in Australia in 2016 were US\$269 million, after production costs, depreciation, exploration expenses and taxes.<sup>26</sup> This compared well to global earnings of only US\$196 million which were driven down by losses of US\$4.2 billion in the US.<sup>27</sup>

It appears that Australia is a highly profitable market for Exxon and will likely be more important as production continues to ramp up. Revenues in 2015 and 2016 are down globally due to low oil prices, but the Australian business has benefited from the major rise in domestic gas prices.

## ATO Data Reveals Large Revenues and No Income Taxes Paid

According to the ATO Data for the 2014/15 tax year, Exxon had nearly \$8.5 billion in total income but had zero taxable income and paid zero in tax.<sup>28</sup> Out of all companies in Australia, Exxon ranked 27th in total income. For comparison sake, Woodside an Australian oil and gas company, ranked 28th. With slightly less in total income, Woodside had \$3.6 billion in taxable income and paid tax of nearly \$811 million in income tax. What explains this stark difference?

Exxon paid \$265 million in Petroleum Resource Rent Tax (PRRT) payments from its 50% share in the Bass Strait operation, but this is a substitute for a royalty and a payment for the resources. This should not be treated as an income tax. Significantly on the same volume of gas, from the same project, it appears that BHP paid at least \$29 million more in PRRT.<sup>29</sup>

The ATO data for the 2013/14 tax year, shows Exxon had total income of over \$9.6 billion, but zero taxable income and paid zero in tax. This total income was 23rd highest of all companies in Australia. For comparison sake, Woodside was 36th on the list with total income of \$6.3 billion and paid \$327 million in corporate tax.<sup>30</sup>

In the same year, Exxon paid \$538 million in PRRT, which was at least \$21 million less than BHP on the same volume of production from Bass Strait.<sup>31</sup>

20. Exxon Mobil Corporation, Form 10-K, p.102 <https://www.sec.gov/Archives/edgar/data/34088/000003408817000017/xom10k2016.htm>

21. Ibid, p.101.

22. This figure of reinvested earnings from international operations is a reporting requirement for US listed companies. Several recent reports on large US based multinationals have defined the meaning of these reported figures similarly. For recent examples, see The Wall Street Journal article from 25 April 2016, "Sheltering Foreign Profits From U.S. Taxes Is No Big Feat", or the Bloomberg article from 4 March 2015, "U.S. Companies Are Stashing \$2.1 Trillion Overseas to Avoid Taxes", or the Citizens for Tax Justice report from 4 March 2016, "Fortune 500 Companies Hold a Record \$2.4 Trillion Offshore".

23. Exxon Mobil Corporation, 2016 Financial & Operating Review, p.56

24. Ibid.

25. Ibid, calculations based on Exxon data.

26. Ibid.

27. Ibid.

28. The two years of publicly available ATO data are here: <https://data.gov.au/dataset/corporate-transparency>

29. Ibid.

30. Ibid.

31. Ibid.

32. ExxonMobil Australia Pty Ltd, Annual Report for the period ended 31 December 2016, p.1, Directors' Report.



64. Ibid, p.27.



# Tax Office Raises Concerns About Offshore Oil and Gas Industry

In a 2017 submission to the Senate Inquiry into Corporate Tax Avoidance the Australian Tax Office (ATO) raised serious concerns about the revenue implications of related party corporate structures in Australia's offshore oil and gas industry.<sup>45</sup> The ATO submission reveals that "for the 2014-15 income year approximately \$97 billion of related party loans were in place in the oil and gas industry, giving rise to approximately \$3.9 billion of interest paid to related parties offshore."<sup>46</sup> The two US oil giants, Exxon and Chevron, appear to be responsible for more than half of this offshore related party and interest payments.<sup>47</sup>

The offshore oil and gas sector is the largest user of offshore related party debt.<sup>48</sup> The ATO states that "questions remain as to the appropriateness of the costs associated with these debts. Related party financing poses a tax risk...that the financing costs charged to the Australian entity by the offshore related party are excessive, reducing the taxable income of these entities in Australia."<sup>49</sup>

In relation to supply chains and marketing the ATO stated that as "offshore projects enter the production phase, we have observed an increase in export flows with related party sales and marketing hub arrangements."<sup>50</sup> These marketing arrangements "pose significant profit shifting risks if too much profit is allocated to the hub in the offshore jurisdiction, or...where the arrangement is not consistent with the arm's length principle...."<sup>51</sup>

# Profit Shifting Trading Partner?

ExxonMobil Australia's primary trading partner appears to be ExxonMobil Asia Pacific Pte Ltd in Singapore. The Singapore company's principal activities are "the refining, manufacturing, marketing and trading of crude oil, petrochemical and petroleum products, and providing management and other headquarter-related services to related companies operating in the Asia Pacific Region."<sup>52</sup> The income statement of the company shows revenue of US\$21.7 billion resulting in net profit of US\$1.9 billion.<sup>53</sup> The majority of the company's profits are not subject to Singapore's corporate income tax rate of 17%, but to concessionary tax rates of 5% and 10%.<sup>54</sup>

The cash flow statement shows a foreign withholding tax paid of over US\$2 million and an income tax "expense" of US\$106 million, but it is not clear if income tax was actually paid in Singapore.<sup>55</sup>

Despite low tax rates, several schemes may have been used to reduce tax payments in Singapore. It is also very likely that transactions with this company help eliminate tax payments in Australia.

**"EXXONMOBIL AUSTRALIA'S PRIMARY TRADING PARTNER APPEARS TO BE EXXONMOBIL ASIA PACIFIC PTE LTD IN SINGAPORE."**

45. Australian Tax Office, 30 March 2017, "ATO Submission to the Senate Economics Reference Committee Inquiry into corporate tax avoidance and minimisation and Australia's offshore oil and gas industry". <https://www.aph.gov.au/DocumentStore.ashx?id=c4530dda-2689-47a4-9f10-a0d8707620ae&subId=509861>

46. Ibid, p.27.

47. This is based on information disclosed in the 2016 annual reports, filed with ASIC, of the Australian subsidiaries which provide some basic numbers for both related party debt and interest payments.

48. Australian Tax Office, 30 March 2017, "ATO Submission to the Senate Economics Reference Committee Inquiry into corporate tax avoidance and minimisation and Australia's offshore oil and gas industry", p.27.

49. Ibid.

50. Ibid, p.23.

51. Ibid., p.24.

52. ExxonMobil Asia Pacific Pte. Ltd., Financial Statements Year ended 31 December 2016, p.14. Filed with the Accounting and Corporate Regulatory Authority (ACRA) in Singapore and obtained from a private vendor.

53. Ibid, p.8.





## **Conclusion: Australia Needs Mandatory Disclosure for Resource Companies**

The Australian people deserve answers about Exxon's tax affairs in Australia. Exxon appears to have deceived the Senate Inquiry into Corporate Tax Avoidance by not disclosing its ownership structures in the Netherlands and the Bahamas. The company's Australian filings also fail to disclose basic ownership information and lack sufficient detail on the company's related party transactions.

To restore public confidence in the Australian tax system and make sure that Australians are getting a fair return from the exploitation of their finite natural resources there needs to be a public and transparent investigation of Exxon's tax affairs.

Exxon, and other multinationals, particularly in the resources sector, must be required to be dramatically increase transparency and disclosure of their operations. While other resource companies, such as Rio Tinto, BHP Billiton Shell and BP, do provide global project level disclosure, Exxon internationally have been one of the largest obstructers to voluntary or mandatory disclosure.<sup>82</sup>

Mandatory disclosure reporting would put Australia in line with the other 30 countries who already have this legislation which provides the public with project by project information on all payments to governments.<sup>83</sup> Australia is currently lagging far behind others, including the United Kingdom, Canada, and the European Union, in requiring resource companies to disclose their payments to governments in a standardised and public format.<sup>84</sup>

Project level disclosure is of the upmost importance to transparency and accountability and essential to determine if a company is paying a fair amount in tax and royalties. Without project level payments, companies can aggregate many of their payments together, inflating their actual economic contribution.<sup>85</sup> Perhaps this is why Exxon have fought so hard against disclosure...

### **What has Exxon got to hide?**



The interest in the Indonesian oil field is held through Ampolex (Cepu) Pte Ltd which is incorporated in Singapore. The company's 2016 Financial Statements filed in Singapore have much more detail than the Australian parent company. The income statement shows sales of US\$473 million and profit before tax of US\$269 million.<sup>72</sup> This is significantly higher than the total profit reported by the parent company in Australia.

The Singapore company has no employees and pays no tax in Singapore, but made US\$82 million in income tax payments in Indonesia.<sup>73</sup>

The operator of the project, ExxonMobil Cepu Ltd, owns 20.5% and is an Exxon subsidiary incorporated in Bermuda.<sup>74</sup> The two Exxon companies together own 45% and the remaining 55% of the project is owned by Pertamina (45%), the Indonesian state-owned oil company, and by four local government companies designated by the Government of Indonesia that together own 10%.<sup>75</sup>

The Exxon subsidiaries are subject to an "Indonesian corporate income tax and branch after profit tax with a combined effective rate of 44% on its respective shares of petroleum production and any other income, less deductible costs...."<sup>76</sup> Not only do Indonesian government entities directly own 55% of the oil production, but Exxon's interests are subject to an effective income tax rate of 44%. In the case of Exxon, the Indonesian government appears to extract significantly more benefit from natural resource exploitation than the Australian government.

The Indonesian government is also actively pursuing Exxon over alleged underpayments. This project "has various audit claims outstanding from 1990-2015 which are in dispute amounting to approximately US\$937 million...."<sup>77</sup> The Australian-owned Singapore company's "share of liability is approximately US\$250 million...."<sup>78</sup>

Separately, in November 2015 the Australian/Singapore company "received assessment letters from the Indonesian Tax Office ("ITO") for underpayment of corporate and dividend taxes for the fiscal years 2010 and 2011."<sup>79</sup> Another assessment letter from the ITO was received in June 2016 for underpayment of corporate and dividend taxes for fiscal year 2014 and the company is currently being audited by the ITO for its corporate and dividend taxes for fiscal years 2012 and 2013.<sup>80</sup>

Richard Owen, the current Chairman of the ExxonMobil group of companies in Australia since June 2013 was previously President and General Manager of ExxonMobil Affiliates in Indonesia.<sup>81</sup>

65. ExxonMobil Australia Pty Ltd, Annual Report for the period ended 31 December 2016, p.44, Note 23, Subsidiaries and p.10, Statement of Cash Flows, Taxes paid.

66. Luke Fletcher and Adele Webb, December 2012, Jubilee Australia Research Centre, "PIPE DREAMS: The PNG LNG Project and the future hopes of a nation", p.5. <http://www.jubileeaustralia.org/publications/pipe-dreams-the-png-lng-project-and-the-future-hopes-of-a-nation>

67. Michael Main, 10 March 2017, ABC News, "Papua New Guinea gets a dose of resource curse as ExxonMobil's natural gas project foment unrest". <http://www.abc.net.au/news/2017-03-10/png-gets-a-dose-of-resource-curse-from-exxonmobils-lng-project/8343090>

68. ExxonMobil, 2016 Financial Statements and Supplemental Information, p.68, Note 20, Subsequent Events. [http://cdn.exxonmobil.com/~media/global/files/investor-reports/2017/2016\\_financial\\_statements.pdf](http://cdn.exxonmobil.com/~media/global/files/investor-reports/2017/2016_financial_statements.pdf)

69. ExxonMobil Australia Pty Ltd, Annual Report for the period ended 31 December 2016, p.2, Directors' Report.

70. Ibid, p.40, Note 20, Contingencies, Indonesia Government audit claims.

71. Ibid.

72. Ampolex (Cepu) Pte Ltd, Financial Statements Year ended 31 December 2016, p.7. Filed with the Accounting and Corporate Regulatory Authority (ACRA) in Singapore and obtained from a private vendor.

73. Ibid, p.22, p.24 and p.10, Cash flow statement.

74. Ibid, p.11; and incorporation of the company in Bermuda is from Exhibit 21 of Exxon Mobil Corporations 2016 10-K annual report filed with the US SEC.

75. Ibid, p.11.

76. Ibid, p.12.

77. Ibid, p.22.

78. Ibid.

79. Ibid, p.25.

80. Ibid, p.26.

81. Australian Institute of Company Directors, 29 May 2014, Gippsland Leaders Lunch With Richard Owen, Chairman ExxonMobil Australia, "Our greatest energy union". [http://www.companydirectors.com.au/~media/Resources/Events/VIC/Registration%20Forms/V140529LU1%20Gippsland%20Leaders%20Lunch%20with%20Richard%20Owen%20ExxonMobil\\_WEB.ashx](http://www.companydirectors.com.au/~media/Resources/Events/VIC/Registration%20Forms/V140529LU1%20Gippsland%20Leaders%20Lunch%20with%20Richard%20Owen%20ExxonMobil_WEB.ashx)

82. Daniel Kaufmann, 9 November 2017, Financial Times, "US credibility suffers in exit from extractives transparency pact". <https://www.ft.com/content/280001f0-c3ca-11e7-a1d2-6786f39ef675> and Jennifer A Dlouhy, 3 November 2017, Bloomberg, "U.S. to Exit Global Anti-Corruption Effort Aimed at Oil Cash". <https://www.bloomberg.com/news/articles/2017-11-02/u-s-to-exit-global-anti-corruption-effort-aimed-at-oil-money>

83. Publish What You Pay Australia, 6 September 2017, "Abundant Resources, Absent Data: Measuring the Openness of Australian Listed Mining, Oil and Gas Companies on the African Continent". <http://www.publishwhatyoupay.org/pwyp-resources/abundant-resources-absent-data/>

84. Ibid.

85. A prime example of this is ExxonMobil Australia's "Tax Facts", which lumps several types of tax payments and royalties together over long periods of time to make the claim that the company's effective tax rate in Australia is over 50%. <http://www.exxonmobil.com.au/en-au/company/news-and-updates/publications/exxonmobil-australia-tax-facts>