30 January 2015

Senator Sam Dastyari
Chair
Senate Standing Committees on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

Dear Senator

Inquiry into Corporate Tax Avoidance

Origin Energy Limited (**Origin**) welcomes the opportunity to make a submission to the Senate Economics References Committee (**Committee**) in relation to the Inquiry into Corporate Tax Avoidance and Minimisation (**Inquiry**). Our key points, addressing the Terms of Reference for the Inquiry and additional information request are summarised below and expanded on in the body of our submission:

- Australia has one of the most complex and comprehensive tax systems in the world that requires simplification not expansion;
- Australia's taxation regime transparency, data publication and enforcement powers are sufficient;
- Origin supports Australia's international collaboration on Base Erosion and Profit Shifting;
- Origin welcomes the Government's Tax White Paper Process as an opportunity to review and improve our tax system so that it is efficient and internationally competitive and encourages economic growth; and
- Origin undertakes all required tax compliance and reporting obligations.

Our comments with respect to the specific terms of reference of the Inquiry are noted below.

a) The adequacy of Australia's current laws

We understand that the purpose of the Inquiry is to review potential tax avoidance and aggressive minimisation by corporations registered in or operating in Australia. In our view, issues associated with tax regime enforcement in relation to multinational corporations are, by nature, international issues, and will be best addressed by collaborative efforts between countries. While Australia's corporate tax regime could be improved by reducing complexity and providing greater certainty, we do not consider that international issues of tax avoidance or aggressive minimisation arise from specific

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shortcomings within the Australian regime; rather, corporations operating in Australia currently pay significant tax relative to those operating in comparable jurisdictions. We acknowledge that this fact may be contrary to perceptions within some segments of the community, and we consider that this heightens the imperative of appropriate public communication.

Our view is that Australia has one of the most complex and comprehensive tax systems in the world. This complexity leads to substantial effort and cost in order for a taxpayer to be in compliance with their obligations under the Australian tax law. The breadth of coverage of the system eliminates the scope for corporations registered in or operating in Australia to avoid or aggressively minimise tax.

In recent years we have witnessed a further tightening of aspects of our tax laws to target tax avoidance. These new rules apply to both Australian registered corporations and multinational corporations operating in Australia. This has included changes to the general anti-avoidance provisions, and in respect of international dealings, a tightening of the Australian thin capitalisation rules, and enactment of new transfer pricing rules. The changes to the transfer pricing laws has placed Australian tax authorities in the position of having some of the most far-reaching powers in the world under these laws, including the power to effectively recreate transactions and in turn the relevant tax liabilities.

Further, Australia's dividend imputation system supports compliance with income tax laws. Corporate income tax paid is effectively a prepayment of income tax payable by Australian resident shareholders. Therefore, by virtue of the dividend imputation system, it is in the interests of an Australian registered corporation with Australian resident shareholders to pay income tax in Australia.

Currently, as you will be aware, the Organisation for Economic Co-operation and Development (OECD) countries are endeavouring to address the significant concern amongst their membership of "base erosion and profit shifting" (BEPS). We support Australia's involvement in this work and in particular, the work in the area of the digital economy to address the gaps that exist that allow for income wherever sourced not being appropriately taxed in any jurisdiction. Australia should be involved in the outcome of the OECD's work in this area to ensure that income, in particular that derived by multinational corporations, is subject to an appropriate level of taxation. Equally, it will be important to ensure that any proposed changes do not result in double taxation, which may occur if income properly sourced in Australia (for example, sales of minerals mined in Australia) is subjected to income tax in other jurisdictions. Potential tax avoidance and aggressive minimisation by multinational corporations is not an issue that Australia can, or should, address alone and this issue should not impact the imperative to reform Australia's tax systems to promote economic activity.

b) Any need for greater transparency to deter tax avoidance and provide assurance that all companies are complying fully with Australia's tax laws

We do not consider there to be a lack of transparency in relation to Australian tax regime enforcement. In our view, revenue authorities throughout Australia, as for many other jurisdictions, have more than adequate powers to source all information necessary to apply the relevant tax rules. In many instances these authorities have the ability to exchange information with revenue authorities outside of their jurisdictions.

Australia has recently expanded its tax secrecy and transparency provisions to extend transparency of the Australian corporate tax system. The amendments to the provisions require the Commissioner to publish selective information about corporate tax entities that have total income of $100 million or more. Origin already publishes the relevant data that will now be disclosed by the Commissioner, and publishes more tax specific information via its six monthly financial reporting and its annual sustainability report.

We caution against publication of additional corporate tax data by government authorities. Publication of selective information related to a taxpayer's tax position can be misinterpreted, as the numbers alone are not necessarily representative of the substantial and complex calculations to determine the final taxable income result (such as availability of tax losses to reduce assessable income, and amounts added back or subtracted to determine taxable income which can significantly differ from accounting income and so forth). Recent media reporting of data related to a corporation's tax position in the absence of significant qualitative and quantitative information that informs such data can (and has) resulted in a misinformed public. This in turn can lead to the formation of incorrect assumptions about whether a particular taxpayer is meeting its tax obligations. Consequently, this can unjustifiably undermine confidence in the integrity of the tax system.

c) The opportunities to collaborate internationally to address the problem

Origin is supportive of Australia's involvement in the OECD's activities in relation to BEPS to address the main priority of profits being shifted to low-tax or no-tax jurisdictions to take advantage of gaps and mismatches in the tax rules of international jurisdictions. We are also of the view that there is currently appropriate Australian representation involved in this process with respect to both the government sector (both Australian Taxation Office and Federal Treasury) and the corporate sector.

Though we have seen some OECD member countries attempt to tackle the BEPS problem alone, the sensible approach is for various jurisdictions to tackle this problem in a collaborative and co-ordinated manner as is currently being carried out by the OECD. While there will be challenges associated with achieving alignment among nations and agreed actions, especially considering that the OECD does not include some of the emerging significant countries such as China, India and Brazil, in our view international collaboration is the only means to tackle the issue of potential tax avoidance and aggressive tax minimisation on the part of multinational corporations.

d) The performance and capability of the Australia Taxation Office (ATO) to investigate and launch litigation in the wake of drastic budget cuts to staffing numbers

From our experience there does not appear to be any visible diminution to the ATO's ability to investigate and launch litigation as a result of staff cuts. The degree of interaction that Origin has with the ATO has been maintained and the level of diligence exhibited in the review of Origin's tax related affairs continues to be extremely thorough.

e) The role and performance of the Australian Securities and Investments Commission in working with corporations and supporting the ATO to protect public revenue

Origin has no comment.

f) Any relevant recommendations or issues arising from the Government's White Paper process on the 'Reform of Australia's Tax System'

Origin welcomes the Government's Tax White Paper Process as an opportunity to ensure that our tax system is fair and efficient and encourages economic growth and job creation. Business tax policy structure and levels should be internationally competitive to attract investment in Australia.

We note that the Government's White Paper process has not yet formally begun and have no specific recommendations or issues at this stage other than this process should run separately to the OECD-led process. Any recommendations arising from the White Paper process that affect Australia's international taxation provisions should take account of recommendations emanating from the OECD-led process in due course.

g) Any other related matters

We have no further comments to submit in respect of the inquiry terms of reference.

Origin Specific Requested Information

We note that as part of our invitation to make a submission that we have also been requested to include information on Origin's "tax arrangements especially the company's effective tax rates and the strategies it uses to minimise the amount paid in taxes".

In this regard we advise that Origin ensures that it undertakes all the necessary compliance activities and completes all the appropriate documentation to satisfy the requirements for any tax concessions that its activities may qualify for, such as research and development deductions and investment allowances. Any other matter that reduces, and in turn minimises, the amount paid in tax is a function of Origin's commercial operations, be it an interest cost referable to a loan to buy a new piece of equipment or tax depreciation on the same equipment. That is, the matters that drive Origin's taxes paid are a function of the treatment of income and expenditure by the tax legislation, either as a concession or as a cost incurred to derive its taxable profits, or as an accounting profit that is not subject to tax in the relevant tax year.

Secondly with respect to effective tax rates we note that we have been unable to reconcile Origin's financial information and lodged tax return data to the data presented in The Tax Justice Network - Australia report issued in September 2014. We have however provided our internal analysis of effective tax rates for the last 10 financial years ended 30 June 2014, in the attached Attachment.

The effective tax rate determined by Origin is calculated as income tax expense for accounting purposes as a percentage of net profit before tax. Our calculations are also completed for both Statutory net profit and Underlying net profit. Statutory net profit represents the profit required to be reported pursuant to the accounting standards. Underlying net profit is derived from statutory net profit by excluding items that are not regarded as arising from the ordinary operations such as one off transactions, mark to market movements in assets and foreign currency differences as a result of the application of different rates of exchange for financial accounting purposes as compared to income tax compliance purposes.

Further, for the sake of completeness, in reference to The Tax Justice Network – Australia report we note that it also details the so-called "secrecy jurisdictions" that Origin has subsidiaries in. We advise that we operate LPG businesses in a number of the jurisdictions (Cook Islands, Samoa and Vanuatu). One entity based in Panama was acquired by Origin in order to acquire an interest in an Australian gas permit and therefore the activities of this entity are subject to tax in Australia. The entity in Bermuda and entities in Singapore act as holding companies that we have acquired or established to undertake development activities in South East Asia and South America, none of which have generated any income to date. Finally to the extent any of these secrecy jurisdiction domiciled companies generate income in their home jurisdiction, the income is also taxable in Australia pursuant to the Australian Controlled Foreign Corporation tax rules (as is currently the case for Origin's subsidiaries in Vanuatu, Cook Islands and Samoa).

If you would like to discuss any of the above, please contact either myself or Origin's General Manager Taxation Tony Principe

Yours sincerely

Karen Moses
Executive Director, Finance & Strategy

Attachment A

Origin Energy Limited

% Tax Rate

	FY**05**	FY**06**	FY**07**	FY**08**	FY**09**	FY**10**	FY**11**	FY**12**	FY**13**	FY**14**
Underlying	31%	27%	29%	27%	23%	26%	30%	30%	29%	29%
Statutory	31%	27%	21%	27%	9%	22%	37%	22%	8%	15%

Reason for significant variances from statutory tax rate of 30%

2007	**Statutory differences**	Recognition of carried forward tax losses that contribute to profit for accounting purposes but do not constitute assessable income for income tax purposes. The reduction in the New Zealand income tax rate generated accounting profits. For accounting purposes, deferred tax liabilities carried forward from earlier years were reduced, but once again these accounting profits are not assessable income for income tax purposes.
2009	**Statutory differences**	Australia Pacific LNG (formerly a 100% subsidiary of Origin) issued shares to ConocoPhillips for ConocoPhillips' investment into Australia Pacific LNG and this generated an accounting unrealised gain upon the resulting revaluation of Origin's continuing investment in Australia Pacific LNG. This gain will be taxable if Origin ever disposes of its shares in Australia Pacific LNG, but no tax expense is currently recorded for accounting purposes in this respect. Additionally the accounting profits included the recognition of previously unrecognised tax losses as well a recognition of a share of the after tax net profits of associates (that is, the after tax profit of the associates is recognised in Origin's accounting profit but no tax is accounted for as it's recognised in the associate's accounts). (statutory) Tax was refunded on the resolution of disputes with the Australian Tax Office and tax provisions referable to these disputes were released, both of which generated accounting profit with no associated tax liability.
	Underlying differences	Tax was refunded on the resolution of disputes with the Australian Tax Office and tax provisions referable to these disputes were released, both of which generated accounting profit with no associated tax liability.
2010	**Statutory differences**	Tax loss recognition, recognition of research & development concessions (statutory and underlying) and recognition of Origin's share of after tax net profits of associates.
	Underlying differences	Tax loss recognition.

2011	**Statutory differences**	Non deductible stamp duty was incurred on an acquisition, which was expensed for accounts purposes and hence the effective tax rate exceeded the statutory tax rate.
2012	**Statutory differences**	Unrealised gain on revaluation of Australia Pacific LNG as a result of Sinopec's investment in Australia Pacific LNG via a share issue by Australia Pacific LNG.
2013	**Statutory differences**	Unrealised gain on revaluation of Australia Pacific LNG as a result of Sinopec's further investment in Australia Pacific LNG via a share issue by Australia Pacific LNG.
2014	**Statutory differences**	An industry issue with respect to the treatment of unbilled income was finalised between the ATO and the electricity and gas industry during the 2014 financial year. The revised position reduced the tax liability recorded for accounts purposes with respect to the unbilled income and hence generated a tax credit for accounting purposes.