

28th April, 2015

Senator Sam Dastyari
Chair
Senate Economics Legislation & References Committees
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Parliament House
CANBERRA ACT 2600

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Dear Senator Dastyari,

Response to commentary by Commissioner Jordan

During the Senate Economics Legislation & References Committees public hearing on Wednesday 22 April 2015 Commissioner Jordan made some comments about the evidence Rio Tinto had given when it appeared on 10 April 2015.

Rio Tinto wishes to make the following comments in relation to Commissioner Jordan's evidence:

1. Commissioner Jordan said that Rio Tinto stated it had paid an "immaterial" adjustment to the ATO. That is incorrect. Rio Tinto stated that there was a "relatively moderate" adjustment, which it subsequently described as a "small amount, relative to our overall profit".
2. Rio Tinto was not asserting that the amount of the adjustment was small in absolute terms, nor that it would be immaterial to the ATO. However, in the context of:
 - a. commentary about Rio Tinto having paid A\$32 billion in the last 5 years in taxes and royalties in Australia as disclosed in our taxes paid reports;
 - b. questions about whether another panel member's provision for US\$1.65 billion was for Australian tax; and
 - c. questions about what might be sufficiently material to require disclosure under Australian Stock Exchange Listing Rules,the description of the amount of the adjustment as "relatively moderate", and a "small amount, relative to our total profits", was apt and correct. (The amount of the adjustment was not material for the purpose of the

Australian Stock Exchange Listing Rules, and so did not require disclosure under them.)

3. Commissioner Jordan described the quantum of the adjustment as “well in the order of over \$100 million”. In fact it was A\$107,049,372, is in respect of a number of years, and amounts to about 1% of the corporation tax paid in those years. The fact is we pay a huge amount of tax and have large dollar value transactions, so our adjustments tend to be in the order of that magnitude.
4. The reason why Rio Tinto did not disclose the actual number was because it has confidentiality obligations owed to the ATO, and it was concerned that the ATO would not favour disclosure. However, given the quantum of other numbers being discussed at the hearing, it wanted to give Committee members some idea of relativities - hence the description of the quantum of the adjustment in the relative terms it used. Rio Tinto has now obtained the Commissioner’s consent to the disclosure of the actual amount paid.
5. Rio Tinto disclosed to the Committee that it remains under audit in relation to a number of later years and in doing so indicated that the ATO is reviewing the relevant transactions. As indicated to the Committee, Rio Tinto does not as yet have a position paper from the ATO in relation to the transactions which are under audit.
6. Commissioner Jordan said in respect of the profit of US\$719m earned in Singapore last year that “This is the very question that we are robustly testing”, namely whether those profits are the result of arms-length pricing. That is not totally correct. That profit includes profit earned on transactions between our Singapore commercial centre and third parties, as well as between our Singapore commercial centre and non-Australian businesses – neither of which are being tested. It also includes profits relating to transactions with Australian businesses that are not subject to audit.

Yours sincerely,

Phil Edmands
Managing Director, Rio Tinto Australia