



International Transport Workers' Federation

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International Transport Workers' Federation
Federación Internacional de los Trabajadores del Transporte
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Internationella Transportarbetarefederationen
Internationale Transportarbeiter-Föderation
Международная федерация транспортников
التنظيم عالمياً، النضال من أجل حقوقنا

30 March 2017

Submissions were closed when this was originally sent to the Committee. Therefore, we are resubmitting this now. This submission is particularly relevant since the scope of the Senate Inquiry has been specifically expanded to include tax and royalty issues directly related to the offshore oil and gas industry. The following information is current as of 31 August 2016, but we are happy to provide new information and additional updates. We strongly believe that it is import to correct the record and inform this discussion with facts. The original text of the submission follows:

31 August 2016

██████████ Committee Secretary
Senate Standing Committee on Economics
(Senate Inquiry into Corporate Tax Avoidance)
P.O. Box 6100
Parliament House
Canberra, ACT 2600

submitted via email to: economics.sen@aph.gov.au

RE: Chevron Australia's Response to ITF Submission 124

Dear Dr. Dermody and Members of the Committee,

This letter is a response to Chevron's letter, dated 18 December 2015 in which Chevron alleges that the International Transport Workers' Federation (ITF) initial submission is "*factually incorrect*" and "*deliberately misleading*." In addition to addressing these allegations, we will provide updates and new information on Chevron's aggressive tax avoidance practices.

The ITF and the global trade union movement strongly support enhancing tax transparency and ensuring that Chevron -and other multinational corporations- are required to pay their fair share of taxes in Australia and around the world. Corporations must pay their fair share of tax where they generate revenue to ensure that governments adequately fund schools, hospitals, infrastructure and other essential services which help to reduce inequality and improve the quality of life for all. The public record of the ITF, the International Trade Union Confederation (ITUC) and other Global Union Federations (GUFs) on addressing multinational tax avoidance is very clear.

Chevron Corporation's Annual Reports: now over US\$45 billion stashed in off-shore accounts

Chevron suggests that the figure of US\$35 billion in untaxed revenue in offshore accounts is “*incorrect*” and “*deliberately misrepresented*”. However, Chevron confirms, the ITF sourced the figure of “over US\$35B in untaxed revenues in off-shore accounts” from Note 16 of Chevron Corporation’s 2014 Annual Report. This disclosure is required by US accounting standards. The new figure from the 2015 annual report is now **US\$45.4 billion**. Chevron managed to increase this amount by nearly US\$10 billion despite reporting a loss on global operations in 2015.

While Chevron disagrees with the terminology used in the ITF report, the ITF’s interpretation of these figures is widely acknowledged in several recent US reports on the “*reinvested earnings from international operations*” of large US based multinationals. 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](#)”. The latter two sources specifically mention Chevron.

While this US\$45.4 billion in revenues may have been subject to tax in international jurisdictions, how much of it has been subject to the 0% tax rate that exists in Bermuda and other similar jurisdictions where Chevron has significant numbers of subsidiaries?

Chevron’s reported international effective tax rate fell to 2.7% in 2015. Had it not been for Chevron’s sale of its 50% interest in Caltex Australia which produced a gain of US\$1.6 billion dollars, it is likely that the reported global effective tax rate would have been negative. The profit from the Caltex Australia sale was not taxed in Australia. Chevron has not disclosed how much or to whom it paid tax on this sale.

With Australia’s implementation of country by country reporting, the ATO should have some additional insights on Chevron’s global tax payments. However, that information -unless the law is amended- will be confidential. Country by country reporting on payments to governments for Chevron and other extractive companies will be publicly available in the UK, and perhaps other jurisdictions, later this year. The US has also recently implemented mandatory public project by project reporting requirements for US listed companies in the extractive sector. The US disclosure will go into effect in 2018.

Chevron’s letter suggests that it is misleading to state that Chevron’s tax filings had not been approved by the US Government for 7 years and that this is the “*normal course of business*”. Chevron Corporation’s 2015 annual report does show that its US tax filings for 2011 have now been approved by the IRS. However, other oil producing countries had not finalised Chevron’s tax filings for several years longer, Nigeria since 2000, Angola since 2009 and Kazakhstan since 2007.

Australia has been a major global destination for Chevron investments and will be a large source of global production. However, Chevron Corporation’s annual reports

don't indicate whether Australia is a major jurisdiction for tax purposes or whether the ATO has finalised Chevron's tax filings in Australia.

Despite the scale and significance of the Federal Court case in Australia, Chevron Corporation's 2015 annual report makes no mention of the ATO Federal Court case. There is also no mention of any ongoing audits, reviews, or disputes with the ATO or specific mention of any other ongoing tax disputes in other jurisdictions. Nor does Chevron Australia's 2015 annual report, filed with ASIC, mention the Federal Court case or any ongoing audits, disputes or issues with the ATO.

Questions & Recommendations

Given international precedents and the economic importance of the resource sector, **Australia should implement detailed mandatory public reporting standards for all extractive companies** operating in or based in Australia. Australia is currently a significant laggard in the global implementation of Extractive Industry Transparency Initiative (EITI) reporting.

Chevron should be asked whether Australia is considered a major jurisdiction for tax purposes and whether or not the ATO has approved the company's tax filings for recent years.

Chevron's Tax Haven Subsidiaries in Bermuda and Delaware

Chevron's letter confirms that it "*currently has **211 active affiliates** incorporated in **Bermuda** and **212 in Delaware**."* (emphasis added) Chevron's letter also confirms that other companies, including Chevron Australia Transport Pty Ltd., were "*registered as a foreign company on the Bermuda Register of Companies ('ROC').*" There may be other Chevron companies still registered as foreign companies in Bermuda and other companies like Chevron Australia Transport that are no longer active, but still appear on the ROC. The **real questions are:**

- What purpose do these **211 active affiliates** in Bermuda serve?
- Why are they incorporated in Bermuda?

The ITF knows from subsequent research into Chevron's corporate structure in the UK, that three Bermuda subsidiaries and one in the Bahamas are the direct owners of four operational companies in the UK that also trade in other countries. Additionally, two other Bermuda subsidiaries are involved in "cash pooling" with the UK subsidiaries and have loans back and forth between another Chevron subsidiary in the Netherlands. The ITF's UK report, [Offshore Oil, Offshore Tax: A Case Study of Chevron's North Sea Operation](#), was launched in August. The ITF, together with the Shadow Chancellor, John McDonnell MP, and Unite the Union, the largest union in the UK, have called for a Parliamentary Inquiry into tax avoidance and the widespread use of tax havens by North Sea oil producers.

With regards to Delaware, Chevron's letter claims *"the ITF's assertion that Delaware is in any respect a "tax haven" is also incorrect. Taxable income earned by Delaware corporations is taxed at the U.S. federal income tax rate of 35% - the same as every other U.S. state."*

A *Bloomberg* article from 27 April 2016, "[Delaware's \\$1 Billion Incorporation Machine](#)", actually used Chevron Australia as an example of why Delaware is considered a tax haven. The Delaware parent company of Chevron Australia Holdings Pty Ltd, Chevron's primary operating entity in Australia, is Chevron Australia Petroleum Company (CAPC). As indicated in an attachment to the ITF submission, this company was incorporated in 1983 and adopted its current name in August 2006. The company was previously named Getty Mining International, Inc.

By most definitions this is a shell company. As far as the ITF is aware, CAPC exists only on paper, it has no office, no employees and its address (2711 Centreville Rd in Wilmington) is the address of the Corporation Service Company, Delaware's second largest corporate service provider. Thousands of companies are registered at this address.

CAPC has increased its lending to Chevron Australia by \$7 billion over the last year and the total line of credit is now \$42 billion. CAPC also owns an ever growing number of shares issued by Chevron Australia. It appears that these shares, now valued at over \$18 billion, are being issued to allow Chevron Australia to remain in compliance with Australia's tightening thin capitalisation (debt to equity) requirements.

Chevron says that *"taxable income"* earned by Delaware corporations is taxed at the 35% US tax rate. However, the key issue is what Delaware considers *"taxable income"*. As confirmed by both Chevron and the ATO during the Senate hearing, interest income earned on the loan from the Delaware parent company to the Australian subsidiary is not taxed in Delaware. Other types of income earned by Delaware companies are also not taxable in Delaware. Perhaps this is one reason why Chevron has **212 active affiliates** in Delaware.

Chevron has yet to fully explain the Australian ownership structure, or its purpose, except now disclosing that all of the other "entities between Chevron Australia and Chevron Corporation are also Delaware incorporated companies."

There is no denying Delaware's status as a tax haven. The ITF report quoted a *New York Times* article from 2012, "[How Delaware Thrives as a Corporate Tax Haven](#)", but in addition to the *Bloomberg* article cited above there has been a lot of recent attention on Delaware's status as a preferred on-shore tax haven for some of the world's largest companies. Delaware's tax haven status is well documented in these recent articles: *Newsweek* (8 April 2016), "[Panama Papers: The Secret State of Delaware](#)"; *The Washington Post* (5 April 2016), "[How the U.S. became one of the world's biggest tax havens](#)"; and *The Guardian* (6 April 2016), "[Forget Panama: it's easier to hide your money in the US than almost anywhere](#)".

The Tax Justice Network's 2015 [Financial Secrecy Index](#), which ranks the US (Delaware) third in global financial secrecy, provides a more detailed analysis.

Questions & Recommendations

Chevron should be asked to provide full details and an explanation of its corporate structure in relation to its Australian operations and primary Australian operating subsidiary. While it is now publicly known that the current lending structure between the Delaware parent and the Australian subsidiary is under audit by the ATO, Chevron should be asked to explain the timing and purpose of the issuance of new shares by the Australian company to the Delaware parent.

No PRRT (Petroleum Resource Rent Tax) payments for 20+ years from Gorgon

The PRRT is the primary resource tax on all of Australia's oil and gas production, both onshore and offshore, and is based on a system of self-reporting and voluntary compliance. We now know that the Gorgon project will not make any PRRT payments for 20 years or longer. While it is understood that the PRRT is designed as a profits based tax and that Chevron is allowed to recoup its initial investment, the PRRT system has become overly generous in subsidising exploration.

The suggestion in the ITF submission that Chevron stood to gain potential tax benefits from cost overruns and delays was related to the PRRT, not corporate income tax.

In the PRRT regime, exploration costs are entitled to an 18% uplift which is compounded annually. The longer a project is delayed the more the PRRT credits increase. Some of Chevron's general project costs, such as \$2.5 billion on carbon sequestration, were somehow classified as exploration costs and therefore entitled to the 18% exploration uplift.

Even prior to the last changes in the PRRT regime, which were highly beneficial to the oil and gas industry, the Henry Tax Review suggested that the PRRT regime was overly generous and not producing the revenue that it should for the benefit of all Australians.

If the PRRT were collecting revenue at the same effective rate as ten years ago, it would collect **an additional \$480 billion in revenues over the next two decades** as LNG exports boom. Clearly the stakes are very high.

Concerns about the lack of future PRRT revenues in the face of Australia's LNG boom have generated some recent media interest. Following are a few recent articles: *The Conversation*, 26 June 2016, "[Australia is missing out on tax revenue from gas projects](#)"; *Sydney Morning Herald*, 20 June 2016, "[Australia missing out on wealth boost from LNG boom, academic claims](#)"; *The Guardian*, 14 May 2016, "[Oil companies skip main resources tax thanks to fossil fuel search incentives](#)"; *Sydney Morning Herald*, 12 April 2016, "[WA gas boom 'will not boost national wealth for decades'](#)"; *Sydney Morning Herald*, 17 November 2015, "[Gas sector grew 12-fold in a decade to \\$60b but tax take flatlines](#)"

Questions & Recommendations

Given that Australia is on the verge of becoming the world's largest exporter of LNG, but not expected to generate any new PRRT revenue for over two decades, ***we urge the Committee to investigate the PRRT regime***, either in the current inquiry or in a separate inquiry. Is the PRRT regime working as it was designed? Should there be greater transparency and does self-reporting voluntary compliance work?

Chevron should be requested to disclose information about its total PRRT credits.

- How and when were PRRT credits generated and have they been audited?
- When will credits be exhausted and when are payments expected to be made?
- How much of the ***oil and gas industry's current \$190 billion in PRRT credits*** are held by Chevron and/or its partners on the Gorgon and Wheatstone projects?

The Current \$42 billion Tax Scheme and the ATO's Federal Court Case Against Chevron Australia

Chevron says that its "*current funding structure is a genuine commercial arrangement*" and is not a "*tax scheme*". Chevron continues to argue this position in its ongoing appeal to the Federal Court's decision on its previous \$2.5 billion loan. The current loan has now blown out to \$42 billion.

The federal judge concluded that the interest rates on Chevron's related party loan were not at "arm's length". The ATO has clearly characterised Chevron's initial loan structure as an intentional strategy to reduce tax liability in Australia. The Federal Court decision is widely regarded as a landmark ruling on transfer pricing issues that will have a broad impact in Australia and globally. One example of the extensive media coverage of this court case, is an article in *Business Insider Australia* (11 November 2015), "[Why Australia's landmark tax ruling against Chevron is a first battle in a global war on profit shifting](#)".

The ATO's case was relatively narrowly focussed to increase the chance of setting an important legal precedent. The loss of tax revenue in Australia from Chevron's lending arrangement is probably significantly larger than the amount in question in the Federal Court case.

While the current lending scheme is at lower interest rates, the \$42 billion scale of the loan means the potential loss in future tax revenue is much larger. Chevron's subsidiaries in other countries typically lend to each other in US dollars, unlike in Australia, and at much lower interest rates. Chevron's rationale for setting up this lending structure appears fairly transparent to most observers and commentators. For example, [The Sydney Morning Herald](#) (23 October 2015) wrote that Justice Robertson "agreed with Tax Commissioner Chris Jordan's submission that it was to "obtain a scheme benefit"" and [The Australian](#) (23 October 2015), wrote that Chevron "was found to have wrongly shifted profits from its Australian to American operations."

In estimating the possible impact of Chevron's current lending scheme, the ITF report did not factor in interest withholding tax and may have unintentionally over-estimated the potentially tax loss. Interest withholding tax payment information was not publicly available at the time. We praise Chevron for providing this information and other breakdowns of taxes paid by type and by year in its letter. The ITF hopes that Chevron will continue to provide additional information to the Committee and that other companies will also provide more detailed breakdowns of tax payments.

Chevron did admit in the Senate hearing that the potential tax loss to Australia over the life of the loan could be \$15 billion.

Questions & Recommendations

- Now that the size of the loan has increased by \$7 billion, has the estimated loss of Australian tax revenue increased?
- Will Chevron provide an update or provide the modelling on the cost of the current loan?
- Why is Chevron using these interest rates and lending structures in Australia, when there are plenty of examples of Chevron related party lending in other jurisdictions denominated in US dollars and with interest rates close to 0% or sometimes negative?

Chevron Australia's Opaque Reporting

The ITF commends Chevron for clarifying that the \$350 million "*adjustment*" reported in Chevron Australia's 2014 filing has no connection to the ATO lawsuit. This was an error in the ITF report along with asserting that the "*adjustment*" (an income tax expense recognised for accounting purposes) could have helped deliver Chevron's \$5.7 million tax refund in 2014. However, this suggests that Chevron has several other disputes with the ATO, above and beyond the Federal Court case, which resulted in provisions for "*uncertain tax positions*".

It is also worth noting that Chevron Australia, despite its massive investments in Australia and its huge potential economic impact, applies the Reduced Disclosure Requirements (RDR) reporting standard which is permitted under Australian accounting standards. This means that its filings are more cryptic, harder to decipher and less transparent than might otherwise be the case. An article in *The Conversation* (30 October 2015), "[The accounting trick that helps multinationals avoid paying tax](#)", by Dr. Roman Lanis, an associate professor in the University of Technology Sydney School of Accounting, reveals that Chevron is not even in compliance with the RDR standard.

In at least one case, Chevron Australia's reporting may be more accurate than Chevron's communications with the Committee. Chevron Australia reported 2,381

employees in 2015, while Chevron's letter claims creating "*nearly 19,000 full time jobs*" since 2011.

Chevron Australia, according to the full year cash flow statements in its calendar year annual filings with ASIC, did receive net tax refunds of \$5.7 million in 2014 and \$25 million in 2011. These refunds may have been affected by timing differences, investments made in the Gorgon and Wheatstone projects or other matters, but it is not possible to know from Chevron Australia's filings.

It is worth noting that in 2014, Chevron Australia - largely through the one-sixth interest in the North West Shelf project - was the source of 4% of Chevron Corporation's global production. In the same year, Chevron received a net tax refund of \$5.7 million. The net revenue from production in Australia was US\$2.4 billion. The average sale price per barrel (US\$95) was higher than any other region, income tax charges were comparably low and the cost of production was far lower than any other region. The average production cost per barrel (\$5.53) in Australia was less than one third of the global average (\$17.69).

Questions & Recommendations

- Will Chevron disclose the range of tax matters that are currently in dispute, or being audited by the ATO, and an estimate of the value of each as determined by the ATO?
- What additional issues and time periods do these tax disputes cover?
- Do any of these disputes relate to the new lending scheme or are they separate issues?
- Will Chevron provide an estimate of its future revenues and profits from Gorgon and Wheatstone?
- Will Chevron provide future estimates, year by year, for payments of corporate income tax, PRRT and all other royalties and taxes in Australia?

Chevron's Low Tax Payments: Investment Cycle or Global Business Model?

Chevron will undoubtedly - and appropriately - recoup its large investment costs in Australia when its projects reach the production stage. However, it is not yet clear if or when Australians may benefit from the exploitation of our natural resources.

There is strong evidence to suggest that Chevron has created business structures, within existing legal frameworks, in order to intentionally reduce tax payments in Australia. While there is no denying that the investment cycle plays a major role in the size and timing of tax payments, Chevron's aggressive tax avoidance seems to be part of the company's global business model.

A [recent analysis](#) by the ITF suggests that in the UK, where Chevron has been operating for 50 years, the total taxes collected on oil and gas production in 2014 equated to an effective tax rate of only 5.4%. The applicable tax rate on oil and gas production in the UK ranged from 61 to 82% in 2014.

As in Australia, Chevron and other major oil companies in the UK, have successfully lobbied for specific and generous tax concessions. It appears that ordinary taxpayers - working people - are helping to subsidise the profits of the world's largest multinationals. This situation has to be addressed and this Committee has an important role to play.

In conclusion, the ITF hopes that Australia reaps enormous future benefits -as promised- from Chevron's large scale investments in Australia. It is not disputed that Chevron's projects will help Australia replace Qatar as the world's largest exporter of LNG. **Unfortunately, it appears that Qatar is generating and will continue to generate far more revenue from its natural resources than Australia.** In 2013, Qatar generated more than US\$56 billion from LNG sales. Even under the worst scenarios of lower price and increased global production Qatar revenue from LNG would still be US\$37 billion in 2026. (Columbia University, Center on Global Energy Policy, 26 March 2015, "[The US Shale Gas Revolution and its Impact on Qatar's Position in Gas Markets](#)") What revenue, if any, the Australian Government will collect from LNG sales in 2026 is unknown.

Clearly, there is room for greater transparency and openness with Chevron -and the larger oil and gas industry- to ensure that Australians benefit from the exploitation of our natural resources.

Finally, we congratulate the Committee for the important work it is doing to draw attention to corporate tax avoidance in Australia and to propose concrete solutions. As a leading global union federation representing over 4.5 million transport workers in over 150 countries we remain committed to assisting this Committee and other global efforts to eradicate corporate tax dodging.

If you have any questions about this letter or the comments above, we are happy to discuss or provide any additional information.

Sincerely,



Jason Ward
Senior Global Strategist
ITF Sydney Office

