

25 July 2019

Dr Helen Szoke, AO
Chief Executive
Oxfam Australia
132 Leicester St, Carlton
VICTORIA 3053

Dear Helen,

Oxfam report on Australian mining companies' tax transparency

Iluka supports tax transparency, which plays an important role in building and maintaining trust with the communities in which we operate. Iluka adopts a responsible and sustainable approach to its tax affairs which includes a Tax Risk Policy that prohibits the company from engaging in any profit shifting or tax evasion activities. Transparent disclosure of its taxes paid is a cornerstone of Iluka's Approach to Tax¹ under which Iluka was one of the first Australian companies to adopt the Australian Board of Tax's Voluntary Tax Transparency Code.

Sierra Rutile's economic contribution in Sierra Leone

Iluka believes that working towards sustainable and profitable operations at Sierra Rutile Limited ("Sierra Rutile") will make a significant contribution to alleviating poverty and inequality in Sierra Leone. Sierra Rutile contributes directly to Sierra Leone's economy via local jobs, support of local businesses and taxes paid to Government. Since Iluka's acquisition of Sierra Rutile in late 2016, total taxes paid / remitted to Government across 2017 and 2018 represent over 20% of total Government company tax and royalty receipts. In 2017, Sierra Rutile's operations represented approximately 3% of Sierra Leone's total gross domestic product (measure of total economic activity), without accounting for indirect economic contribution.

In 2017 and 2018, Sierra Rutile made total payments to Government (inclusive of taxes borne and collected) of US\$24 million and US\$31 million respectively, representing over 20% of the company's revenue in those years. This is in spite of the Sierra Rutile being in a financial loss position across both years. The make-up of taxes paid is set out in Appendix A and explained further below.

Sierra Rutile is also the largest employer in the country, with a workforce exceeding 2,500 people, over 98% of which is Sierra Leonean. In 2018, Sierra Rutile's operations saw US\$59 million paid to local suppliers².

In addition to direct economic contributions, Sierra Rutile provides a wide range of community benefits, including support for education. In 2018, the company awarded over 56 scholarships,

¹ Available on Iluka's website – www.iluka.com

² Being suppliers which are at least 50% Sierra Leonean owned.

providing parents of local communities with financial support to ensure access to education for their children.

Sustainable operations also means looking after the health of our workforce. In 2018, the Sierra Rutile Clinic was subject to a major review and improvement program that resulted in increased staffing, additional training and resources for the clinic which receives over 30,000 visits a year.

Iluka's acquisition of Sierra Rutile is the most significant recent source of direct foreign investment in Sierra Leone, which the Government of Sierra Leone (GoSL) has identified as essential to the country's economic growth. The company's recently announced strategic partnership with the International Finance Corporation (IFC) is also positive for Sierra Leone's investment profile. The IFC is a sister organisation of the World Bank and a member of the World Bank Group. As part of this partnership, Sierra Rutile has committed to meeting IFC's high standards of transparency reporting over payments to the GoSL.

Iluka's approach to tax transparency

Consistent with Iluka's support for tax transparency, the company has been disclosing publicly its taxes paid in Australia, Sierra Leone and the United States via annual sustainability reports since 2017. Iluka notes that while this reporting format may not align strictly with Oxfam's views on how Iluka ought to report taxes on a country by country basis, the taxes paid as disclosed by Iluka align with where Iluka's operations exist, with remaining jurisdictions being immaterial. Referring to Iluka as a company that is among those 'least transparent on tax payments' is misleading.

Sierra Rutile's activities are governed substantially by the *Sierra Rutile (Ratification) Act 2002* ("the Act"). Under the Act, Sierra Rutile must pay corporate income tax at the higher of 30%³ of taxable profits or 3.5% of revenue. The Act therefore guarantees a minimum amount of income tax to be paid which cannot be shielded by any historically accumulated tax losses. Without the Act, income tax would not be payable until and unless the company generated a profit and recouped its historical tax losses. In addition, under the Sierra Rutile Act, Sierra Rutile pays royalties to the GoSL at a rate that is 1% higher than that set out in the domestic law.

Sierra Rutile's total payments to the Government in 2017 and 2018 was US\$55 million, representing an average of 21% of Sierra Rutile's revenue over the two income years. Total payments consisted of taxes borne directly by the company (inclusive of company income tax), taxes collected and remitted by the company and social security contributions, duties and levies, which, though not direct taxes, are a part of Sierra Rutile's total economic contribution in Sierra Leone.

Data collated in Oxfam's report focuses predominantly on company income tax paid. As Oxfam is aware, company income tax is only one of the vast array of taxes paid by companies to Government. Royalties, levies and duties and employee personal income tax remittances all form part of Government revenues and therefore should be represented as part of the company's economic contribution. Focusing solely on corporate income tax significantly under represents a company's overall economic contributions and is misleading to readers. For example, Oxfam has cited that Iluka reported that Sierra Rutile paid taxes of AUD \$5.2 million (US\$4.2 million) in 2017 representing 3.6% of revenues. What Oxfam has reported was company income tax only, notwithstanding that Iluka had informed Oxfam that total taxes paid in 2017 was in fact US\$21 million, representing 20% of revenue. Taxes paid are split between direct taxes borne by Sierra Rutile, being corporate income tax, royalties, mining license and surface rents and import duties

³ The prevailing corporate income tax rate under domestic tax law.

and taxes collected, represented by employee PAYE remittance and withholding taxes (refer Appendix A).

As noted above, Iluka supports strong tax transparency and has reflected its commitment in this area by

- Being one of the first signatories to the Australian Board of Tax's Voluntary Tax Transparency Code ("the Code") and publishing its first Tax Transparency Report ("TTR") on its website for the 2016 income year.⁴
- Inclusion of the company's taxes paid data, including Sierra Rutile's contribution, in its 2017 Sustainability Report and more recently in the 2018 Sustainability Report, as part of Iluka's commitment to align with the sustainable development principles of the International Council on Mining and Metals (ICMM). Appendix A to this letter sets out the economic contribution data for Sierra Rutile that feeds into Iluka's sustainability reports.
- Recently publishing an Approach to Tax statement⁵, which sets out the guiding principles upon which the company's tax risk management framework is based. These principles include:
 - managing tax affairs in a responsible, efficient, transparent and sustainable manner;
 - full compliance with relevant tax laws, including paying taxes on time;
 - ensuring related party dealings reflect arm's length principles in accordance with Organisation for Economic Co-operation and Development (OECD) guidelines; and
 - developing and maintaining relationships with tax policy makers and revenue authorities.

Iluka is continuously reviewing the adequacy of its tax transparency disclosures, including ensuring full compliance with its tax transparency obligations globally. The company is currently working through various proposed tax disclosure measures such as the GRI draft standard on *Tax and Payments to Government*, which contains a recommendation on country by country reporting of taxes. As noted, Iluka effectively reports all material taxes on a country by country basis already.

The below section addresses some specific issues raised in Oxfam's draft report.

1. *Sierra Rutile (Ratification) Act 2002 (Sierra Rutile Act)*

The provisions of the *First Amendment Agreement* ("First Amendment") to the Act ended on 31 December 2014, before Iluka's acquisition of Sierra Rutile in December 2016.

In accordance with Iluka's Approach to Tax and Tax Risk Policy, Sierra Rutile meets its tax obligations in Sierra Leone in full compliance with the law. This entails observation of the domestic tax regime in Sierra Leone, taking into account the fiscal provisions of the the Act. Pursuant to this regime, total tax and remittances to Government by Sierra Rutile since Iluka's acquisition in December 2016 are nearly US\$55 million, representing 21% of Sierra Rutile's revenue.

This includes payment of company income tax at 3.5% of revenue for both 2017 and 2018 despite the company making losses over the same period. In contrast, company income tax under Sierra Leone's domestic tax law and under most other country's domestic tax laws (including

⁴ Please refer to the published report in the Transparency Hub at www.iluka.com.au. Sierra Rutile Limited's (SRL) taxes paid data was not included in Iluka's 2016 TTR as the acquisition was only completed on 7 December 2016.

⁵ Refer to Appendix B and published on Iluka's website.

Australia's) does not entail a company paying income tax until it has taxable profits post utilisation of any carried forward tax losses.

Significant carried forward tax losses are common for mining companies given the significant upfront capital outlay required for mining operations. Sierra Rutile's ability to carry forward and utilise these tax losses is no different to the rules in many other jurisdictions, including Australia.

2. Subsidiary entities in the British Virgin Islands (BVI)

Iluka has three BVI entities in its structure, two of which were inherited on acquisition of Sierra Rutile and the other (being Iluka Investments BVI Limited) incorporated to merge with the pre-existing Sierra Rutile BVI head entity⁶ (previously listed on the AIM exchange in London).

3. Netherlands third party warehouse

As noted in Oxfam's report, Iluka has a third party warehouse arrangement with Eggerding (industrial minerals company) in the Netherlands to provide logistics services including storage of Iluka and Sierra Rutile products at Eggerding's warehouse such that it is close to our European customer base. Neither Iluka nor any of its subsidiaries own this warehouse, nor have a lease and / or control over the warehouse premises or any ownership or other interest in Eggerding. The product stored in the warehouse is sold by Iluka / Sierra Rutile direct to our customers and is not subject to any intra-group transfer pricing arrangements.

Iluka confirms that it has subsidiary entities in the Netherlands but reiterates that they have no connection with the third party warehouse arrangement. There are no intra-group arrangements between Iluka's Netherlands subsidiaries and Sierra Rutile's operations. The inference in Oxfam's report that the existence of Iluka's Netherlands subsidiaries could allow profit shifting to the Netherlands via marketing activities or otherwise is incorrect, as it would be expressly prohibited by Iluka's Tax Risk Policy and Approach to Tax.

Iluka has one sales and marketing employee based in the Netherlands interacting with European customers in respect of Iluka Australia's activated carbon product. All sales of the product are concluded direct between Iluka Australia and third party customers and are not made through Iluka's Netherlands subsidiaries.

As with its stance on anti-bribery and corruption, Iluka maintains high standards of conduct in relation to transparency on taxes paid. The tax transparency landscape has evolved significantly over the last few years as many measures have been introduced by various Government and non-Government bodies. Iluka is working through these in a diligent and responsible fashion to continue to enhance its approach to tax transparency.

Iluka welcomes scrutiny on its approach to tax transparency and requests that such scrutiny be reported accurately and transparently and without incorrect and/or unfair inference.

⁶ This entity was subsequently de-listed and deregistered post the merger.

Further information about Iluka's economic contribution in Sierra Leone can be found in the company's 2018 Sustainability Report, published on Iluka's website.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Adele Stratton', with a stylized flourish at the end.

Adele Stratton
Chief Financial Officer

Appendix A – SRL 2017 and 2018 Payments to Government

	2017 USD \$millions	2018 USD \$millions	Total 2017 and 2018
Taxes borne			
Corporate income tax	4.2	4.1	8.3
Royalties	5.9	5.0	10.9
Mining license and surface rents	1.3	1.0	2.3
Import duties	1.9	6.7	8.6
Taxes collected			
Employee PAYE remittance	6.0	7.6	13.6
Withholding tax	1.9	4.0	5.9
Total taxes borne and collected	21.3	29.0	49.7
Other payments and contributions			
Employee social security contributions (NASSIT)	1.5	1.7	3.2
Fees and permits	1.1	0.9	2.0
Total payments to Government⁷	23.9	31.0	54.9
Mineral sands revenue	110.2	151.6	261.8
Segment profit / (loss) before tax	(10.8)	(1.9)	
Total payments to Government as a % of SRL revenue	21.7%	20.4%	21.0%

⁷ Sum of total taxes borne and collected and other payments and contributions.

APPENDIX B – OUR APPROACH TO TAX STATEMENT



OUR APPROACH TO TAX

In pursuing our objective of delivering sustainable value, we prioritise the sustainability of our business, our people and our communities, including our commercial customers, suppliers, governments and other external stakeholders.

We recognise that our economic contribution, of which tax is a part, creates value for our communities.

Building and maintaining trust is essential to the sustainability of our communities. We do this by delivering on our commitments, including paying tax in accordance with our legal obligations.

As fiscal policies are a factor that impact long term investment decisions, we consider that tax regimes should promote economic growth by being stable, competitive, administratively efficient and provide long term certainty.

We have in place a board-approved tax risk governance framework which includes our Tax Risk Policy. This framework makes it clear that we manage our global tax affairs in a responsible, efficient, transparent and sustainable manner, in full compliance with relevant laws.

We seek to develop and maintain transparent and trusting relationships with tax policy developers and revenue authorities, proactively clarifying interpretations and practices.

Our international related party payments take place in accordance with the arm's length principles contained in the Organisation for Economic Co-operation and Development (OECD) guidelines.

We participate in the Australian Board of Taxation's Voluntary Tax Transparency Code and support the Extractive Industry Transparency Initiative.

We welcome transparency on our tax payments and disclosures under global financial reporting standards and other applicable local regulations, including disclosure of material taxes paid and collected in jurisdictions where we operate.