

10 March 2009

Small Business and General Business Tax Break – Consultation  
Business Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

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Dear Sir

### **Submission on Small Business and General Business Tax Break**

The Minerals Council of Australia (MCA) welcomes the opportunity to comment on the Exposure Draft of the *Tax Laws Amendment (Small Business and General Business Tax Break) Bill 2009* (the Bill).

The MCA supports the Government's initiative in providing a temporary additional tax incentive to boost business investment, bolster economic activity and support Australian jobs. However, the MCA believes that there are opportunities for this initiative to be improved in order to maximise its effectiveness in achieving the desired outcomes. Our comments in relation to the Exposure Draft are outlined below.

#### **Exposure Draft Clarity**

As an overall comment, we note that the Bill as currently drafted is applying new concepts for the determination of eligibility that are cumbersome and difficult to follow. The MCA submits that where possible the Bill should incorporate existing concepts and definitions from the income tax legislation, particularly Subdivision 40-B of the *Income Tax Assessment Act 1997*. (ITAA97).

#### **Proposed Time Conditions**

The MCA supports the additional 30% deduction incentive and acknowledges that the quantum of this incentive, as compared to the original 10% only deduction incentive, has the potential to achieve the objectives of boosting investment and economic activity, thus favourably impacting on Australian jobs. However, the time window for eligibility for the 30% additional deduction is exceptionally tight, requiring the eligible investment to have been made prior to 30 June 2009.

The minerals industry is characterised by significant capital expenditure and therefore this incentive has the potential to provide a stimulus to this industry to either bring forward capital investment or guard against deferment or cancellation of capital expenditure or expansions in light of the current economic conditions. However, capital expenditure programs of the size relevant in the minerals industry involve long lead times and meeting the 30 June 2009 deadline will be difficult, if not impossible, in relation to many capital projects. As a result, the potential for this initiative to stimulate capital investment activity in the minerals industry will be very limited unless the eligibility date for the 30% deduction is extended beyond 30 June 2009.

The MCA therefore submits that in order to maximise the economic stimulus proposed in the form of this tax incentive the eligibility date for the additional 30% deduction be extended to 31 December 2009 (ie. increase the 10% additional deduction rate, applicable between July-December 2009, to 30%). This will allow for the long lead times associated with large capital projects.

Large capital items are often imported into Australia, and may require shipping to their final destination. If an asset is contracted to be acquired before the relevant date but not physically in hand due to unforeseeable shipping delays (eg inclement weather, piracy attacks), the risk is that the taxpayer will miss out on the investment allowance due to the asset not being installed ready for use by the required cut-off date. To allow for these situations the MCA recommends that the legislation provide the Commissioner with discretion to review the circumstances for the delay and allow an extension of time.

### **Impact on Early Balancing Entities**

The Bill provides that for a taxpayer to be entitled to the tax break the 'investment time' and 'first use' dates have to fall within one of the 2008-09, 2009-10 or 2010-11 income years.

The MCA submits that the Bill treats Early Balancing Entities less favourably than entities with a standard income year. For example, a new investment may have an 'investment time' of pre 1 July 2009 and a 'first use' date of pre 1 July 2010. An entity with a standard balance date would be eligible for a 30% tax break. However, an Early Balancing Entity may only be entitled to a 10% tax break if the 'first use' date falls within 2010-11 income year despite the 'first use' being before 1 July 2010.

Critical aspects of the Bill rely on 'hard dates'. For example, the 'investment time' has to be on or after 13 December 2008 regardless of income years, the 'first use' date has to be on or before 31 December 2010 regardless of income years. The fact that the tax break discriminates between income years with respect to the amount of the deduction does not seem appropriate.

The MCA considers that this outcome is clearly contrary to the policy intention underlying the Bill. The MCA therefore submits that the Bill be revised to make the provisions apply equally to all entities, irrespective of balance date.

### **Scope of Eligible Assets**

The Bill currently only provides access to the additional tax break in respect of new tangible "depreciating assets" or improvements to existing such tangible assets. It currently does not apply to intangible assets, including software, or "mining capital expenditure" as per Subdivision 40-I of the ITAA97, or "capital works" as per Division 43 of the ITAA97.

The MCA questions the policy intent behind excluding intangible assets and other forms of capital expenditure, and, in the interest of ensuring the maximum incentive impact of the measure, encourages broadening eligibility to include all capital expenditure that results in tax depreciation or amortisation. This would include software and other intangible assets, mining capital expenditure and Division 43 ITAA97 capital works construction expenditure.

In addition, some plant and equipment are "bundled" with operating software. As the Bill stands this will require taxpayers to separately identify or apportion value to the software component. This will cause additional compliance burden for taxpayers

### **Application of expenditure thresholds – joint ventures**

Given the prevalence of joint venture activity in the resources industry, we request that the application of the incentive in the joint venture context be clarified and confirmed.

For example, where there are three parties to a mining unincorporated joint venture each holding a 33.3% joint venture interest, and the joint venture calls on each party for \$3,500 each to purchase a new depreciating asset (ie. total investment \$10,500), we propose that the joint venturers should, where all other eligibility criteria are met, be able to access the benefit of the 30% tax break as to their respective joint venture interests.

### **Second Hand Assets**

The provisions in the Bill excluding second hand assets from entitlement to the tax break are cumbersome and difficult to follow. It is only on reading the Explanatory Memorandum that the intention of the provisions becomes clear.

The MCA submits the provisions relating to second hand assets be redrafted to more clearly reflect the intention contained in the Explanatory Memorandum.

Yours faithfully

Stephen Deady  
Director - Industry Economics & Taxation.