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### **Response to 'Improving the transparency of Australia's business tax system' discussion paper**

The Minerals Council of Australia (MCA) welcomes the opportunity to comment on the proposals outlined in Treasury's discussion paper 'Improving the transparency of Australia's business tax system'.

The MCA is the peak industry organisation representing Australia's exploration, mining and minerals processing industry, nationally and internationally. MCA member companies produce more than 85 per cent of the nation's annual minerals output and account for more than 50 per cent of Australia's exports. MCA member companies pay over \$20 billion in tax to the Federal and State governments.

The MCA is supportive of efforts to improve transparency of Australia's business tax system. The MCA and member companies are supporting the Australian Pilot of the Extractive Industries Transparency Initiative (EITI) which aims to increase transparency in the resource sector worldwide by publishing payments by oil, gas and mining companies to governments. The MCA has contributed funding to the Department of Resources, Energy and Tourism as part of the Australian Pilot, and a number of member companies are participating in the pilot.

Further, MCA member companies already publicly disclose taxation information. The Assistant Treasurer acknowledged, for example, Rio Tinto's commitment to transparency through the Taxes Paid Report detailing the USD\$9 billion of taxes paid in Australia in calendar year 2012 in his speech to the 2013 MCA Tax Conference.

In this context, the MCA offers comments on the first proposal in the discussion paper to publish the 'total income,' taxable income and income tax paid by large corporate entities from the 2013-14 income year. The proposal also includes publishing the amount of Minerals Resource Rent Tax (MRRT) and Petroleum Resource Rent Tax (PRRT) payable by an entity with an MRRT or PRRT liability.

#### **Policy Rationale**

Publication of company taxation information by the ATO would constitute a substantial move away from the long established principle of taxpayer confidentiality. The Assistant Treasurer's stated objective of improved transparency is to encourage taxation compliance by enterprises and "allow the public to better understand the business tax system." While it is not made clear precisely how the discussion paper's proposals would encourage compliance, the MCA is concerned that rather than improving public understanding, the release of taxpayer information in the form proposed would provide misleading information from which incorrect conclusions could be drawn by the public and policy makers. Publishing incorrect or misleading information would cause substantial and unfair reputational damage to tax payers.

To ensure the objective of increased transparency is met, the MCA offers the following comments to help ensure accuracy of any tax information published:

- Publishing 'total income' which includes extraordinary amounts of revenue and exempt income could provide a misleading level of income compared to tax paid, particularly in the absence of explanatory footnotes;
- The publication of tax return information should commence from the income year after the proposal is enacted to ensure companies have been given an opportunity to consider disclosure of tax information and to establish appropriate procedures and systems to enable them to do so; and
- Appropriate procedures should be put in place to allow taxpayers to verify the accuracy of information before publication.

These points are elaborated on below.

It must also be noted that by including only Commonwealth income tax, this measure would not capture other significant taxes paid by the minerals industry to State and Territory governments such as royalties which will understate the amount of tax actually paid by some entities.

## **Legislative Design**

### **'Total income'**

As the discussion paper acknowledges, 'total income' is not defined in the tax law. However, the discussion paper proposes that the Commissioner publish information provided by taxpayers in question six of the company tax return to identify gross income. This would include exempt income, non-assessable and non-exempt income and extraordinary amounts of revenue outside the normal operations of an entity.

The MCA is concerned that the definition of 'total income' proposed in the discussion paper will create a misleading and incomplete picture of income and tax paid by entities. Including amounts such as extraordinary income which do not occur each year could inflate 'total income' in a given year providing a misleading picture of income compared to tax paid. This could lead to incorrect conclusions being made as to the taxation contribution of an entity and does not allow for accurate comparisons with other entities.

Given that question six has a number of parts to it; it is unclear why item 6 (s) has been chosen. A more accurate measure of income would be sales revenue or turnover as included in item 6 (c).

The discussion paper proposes a simplistic table disclosing 'total income', taxable income and tax paid. Without the ability to provide qualitative information to support published amounts as proposed, taxpayers may be unjustly perceived to not be paying an appropriate amount of tax. It will usually be the case that a taxpayer's total income is materially different to taxable income, primarily because total income is a measure of gross income (i.e. excluding any expenses incurred in deriving the income), whereas taxable income is a measure of net income under the income tax legislation. The use of the expression 'income' to describe two vastly different measures – one gross and one net – creates a high likelihood that the information will be misinterpreted by those unfamiliar with the intricacies of the income tax forms lodged by taxpayers. In addition, total income might include material unrealised accounting gains such as revaluation reserve increments or unrealised foreign exchange gains which aren't assessable until a foreign exchange realisation event occurs. It may also be the case that a taxpayer has material carried forward tax losses incurred in periods prior to the commencement of the disclosure regime which would explain differences between total income and taxable income.

To help overcome the potential for misunderstanding of information disclosed, taxpayers would need to have the ability to provide limited qualitative information published together with the proposed amounts - perhaps in the form of a footnote to the table.

### **Commencement year**

The paper proposes that the publication of tax return information and MRRT/PRRT liability should commence from the 2013-14 income year.

Commencement from 2013-14 would result in the measure applying from 1 January 2013 to companies with substituted accounting periods ending 31 December 2013. This would not give affected companies sufficient time to capture information, develop systems and decide on appropriate disclosure if they wanted to make a voluntary disclosure in advance of the Commissioner.

To ensure an equitable treatment of all companies, publication of the information should not occur until the first income year after enactment of the legislation i.e. July 2015. Companies operating on a calendar year basis would then have the opportunity to plan for the introduction of this new reporting initiative.

### **Verification procedures**

The publication of taxpayer information has implications for the reputation of taxpayers. It is, therefore, important that taxpayers have confidence that the information published is accurate. Should the Government legislate to mandate disclosure of tax information; procedures should be put in place by the ATO that allow taxpayers to verify the accuracy of any information that is proposed to be publicly released. This is an important because it is common for tax assessments to be amended and occasional omissions and other errors are sometimes made. Adequate quality control procedures will help ensure the accuracy of the data presented to the public.

The MCA appreciates the opportunity to provide these comments to the Treasury. Should you require any further explanation of the issues raised in this submission, please contact me ([James.Sorahan@minerals.org.au](mailto:James.Sorahan@minerals.org.au) or 02 6233 0651).

Yours Sincerely



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