



30 November 2010

The General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email nativetitle@treasury.gov.au

Dear Sir,

Income tax reform options for native title payments

The Association of Mining and Exploration Companies (AMEC) is the peak industry body for mineral exploration and mining companies within Australia.

AMEC's strategic objective is to secure an environment that fosters mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

AMEC therefore provides the following comments relating to income tax reform options for native title payments. In doing so, AMEC notes that the current tax treatment of native title payments has not created any major concerns for industry, other than the ongoing need for clarity and certainty surrounding such payments.

Historically, industry members have had a desire to maintain strong working relationships with traditional owners and their representatives, and have therefore generally not wanted to damage those relationships by criticising mechanisms that deal with native title payments.

AMEC members currently rely on the Federal Court decision in *Cape Flattery Silica Mines Pty Ltd v Federal Commissioner of Taxation* which decided that native title payments (and related legal costs) were on revenue account and deductible. It is AMEC's understanding that relevant mining companies seek to structure their native title payments to align with that decision.

Any reforms to the income tax system for native title payments must retain this deductibility feature. Full deductibility of native title payments should also be included under the Federal Government's proposed Minerals Resource Rent Tax (MRRT) legislation, as such payments are a legitimate cost of production.

Of the tax reform options raised in the consultation paper, the creation of a new tax exempt vehicle (Indigenous Community Fund) appears to be the simplest in structure. The Indigenous Community Fund represents a good opportunity to build greater transparency and accountability into the native title payment process and to ensure that native title payments maximise benefits to all indigenous Australians through a collaborative approach.

AMEC does not support the introduction of a Native Title Withholding Tax (NTWT). This option would impose additional and unnecessary administrative and compliance burdens upon industry. Essentially, a NTWT requires industry to act as revenue collectors on behalf of government. The onus should be on the individual or group beneficiary to declare assessable income for any relevant tax purposes. AMEC is also concerned that relationships between mining companies and indigenous groups may be affected; particularly where the latter may be expecting a 'gross' amount however under the NTWT mechanism a lower 'net' payment would be made, with the balance being remitted to the Australian taxation Office.

The consultation paper does not appear to have considered the operation of section 40-880 of the *Income Tax Assessment 1997* which operates to make relevant expenditure deductible over 5 years.

AMEC trusts that the Government will undertake further consultation with stakeholders prior to implementing a new model for the tax treatment of native title payments. It is essential that further consultation is undertaken to ensure there is a smooth transition in the adoption of a new model.

Thank you for the opportunity to comment on tax reform options for native title payments and look forward to further participation in the consultation process.

Yours faithfully,

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

Simon Bennison
Chief Executive Officer

cc Katherine Jones, First Assistant Secretary, Attorney General's Department