



5th December 2011

Mr Neil Motteram
Principal Adviser
International Tax and Treaties Division
The treasury
Langton Crescent
PARKES ACT 2600

By email; transferpricing@treasury.gov.au

Dear Neil

Review of transfer pricing rules – Consultation Paper 1 November 2011

Thank you for the opportunity to provide comment on this Consultation Paper.

As the peak national industry representative body for the minerals exploration and mining industry, AMEC is vitally interested in any regulatory reform that either directly or indirectly affects our members and the economic and business environment in which they conduct their business.

It is therefore in this context that the following comments are made. In doing so, AMEC records its disappointment with the short consultation period, which has in turn limited our capacity to fully consult with our membership base of over 300 companies. We do however note that there will be further opportunities to comment on the draft legislation.

AMEC notes, and agrees with the observation in the Paper that transfer pricing rules are designed to make sure Australia receives an appropriate share of tax from multinational firms; and that the design of the rules should not unreasonably inhibit Australia's attractiveness as a destination for new investment and business activity.

In this regard, it is therefore essential that the domestic transfer pricing rules should be consistently applied, and provide clarity and certainty for all relevant companies.

AMEC members are particularly concerned about the retrospective application of proposed changes in relation to the operation of the Double Taxation Agreements as a separate taxing power. Any changes should only apply on a prospective basis in line with normal practice for changes to income tax law. In addition, any legislation providing a separate head of power under the treaty should also be applied on a prospective basis. Such an approach will enhance clarity and certainty and not undermine it with the possibility of retrospective application.

AMEC members are also concerned about the proposal to provide the Commissioner with an unconstrained taxing power to reconstruct transactions, particularly through a 'hypothesis' approach rather than reflecting the circumstances that 'actually' exist. Again, such an approach will create doubt and uncertainty for industry.

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AMEC is concerned about the proposed 8 year time limit for the Commissioner to amend an assessment as it is considered to be excessive given the level of uncertainty that would still remain for industry, and should be consistent with other taxation legislation and major trading partners.

AMEC notes that the current rules may also need to be refreshed in light of 2010 upgrades to the OECD Guidelines, however, any such changes should not go beyond those amended Guidelines.

In reviewing the transfer pricing rules care should be taken to ensure that no contradiction occurs with the arms length principles and methodologies that are proposed in determining a miner's 'mining revenue' under Section 30 of the proposed Minerals Resource Rent Tax (MRRT) legislation.

It is also paramount that the administration and compliance burden of the transfer pricing rules are minimised at all times, whilst also maintaining their integrity. The possibility that transfer pricing documentation may become a legislated requirement with the potential application of penalties for non-compliance would appear contrary to that objective.

If you require clarification on the content of this correspondence please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Bennison', with a long horizontal flourish extending to the right.

Simon Bennison
Chief Executive Officer