

26 October 2009

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**The New Research and Development Tax Incentive  
Submission in response to the Consultation Paper  
Yancoal Australia Pty Ltd (Yancoal)**

Yancoal is pleased to have the opportunity to provide comment on the Consultation Paper entitled the New Research and Development Tax Incentive (the Consultation Paper).

**Background to Yancoal**

Yancoal is an Australian company that was established in late 2004. Yancoal's activities are focused primarily on the development of an automated top coal caving technology suitable for the Australian coal mining environment. The company's current operations are based at the Austar Coal Mine near Cessnock in the Hunter Valley.

Prior to the commencement of our R&D, top coal caving technology had never been used in Australia before. The technology was developed originally in France more than 20 years ago but has been further refined by Yanzhou in China for more fully recovering thick coal seams in underground mining. The introduction of top coal caving technology to Australian mines brings with it certain issues, including the effect on support capacity and characteristics, spontaneous combustion, dust, etc. Many of the issues arise due to the different geological and geotechnical environment found in Australia versus other countries.

In order to ascertain if top coal caving technology could be utilised successfully and safely in Australian mining conditions, Yancoal embarked on a R&D project, which involved the mining of two panels at the Austar Coal Mine. The results of the R&D project were analysed to determine the applicability of the top coal caving method to the remainder of the Austar Coal Mine reserve, as well as other Australian underground coal reserves.

The Australian coal mining industry is especially interested in the applicability of this technology to Australian mines, due to the potential to increase recoveries and efficiency at numerous mine sites around the country. Upon completion of the project, Yancoal intends to present its findings regarding the viability of the technology to various industry bodies.

As a result of these progressive activities, Yancoal's R&D has resulted in world-first technologies and significant intellectual property. Although Yancoal has finished mining the first two panels at the Austar Coal Mine using the technology, the results have been mixed – the technology in principle has been proven, however, a number of the key automation were not able to be successfully implemented. Significant work is still required to improve the performance of the world-first technology. Yancoal plans to modify the current technology and then run a series of dedicated R&D trials to determine success. Once this technology is proven to be economically and environmentally viable, Yancoal plans to licence the technology to other Australian mines which will result in increased Australian underground coal mine productivity and in turn lead to more jobs and increased exports, supporting the Australian economy. However, in order to achieve this, Yancoal will require access to R&D incentives to ensure the project's viability.

To date, Yancoal has successfully accessed the current R&D Tax Concession program for the initial design and trialling phases and will also look to gain further benefits from the current rules throughout a part of the innovative modifications that are currently taking place on this world-first technology. However, we have significant concerns about our ability to access the new R&D Tax Credit incentives for key components of the R&D project going forward which is likely to impact the speed at which we can progress this development.

Overall, we support the increased R&D tax credit incentives (i.e. **we support Principle 2 and Principle 3**). However, we are concerned that a series of proposed changes described in the Consultation Paper will have severe affects on our ability to access the new R&D tax incentive for our world-first project (i.e. **we do NOT support Principle 6 and Principle 7**). We would now like to highlight our specific concerns:

#### Yancoal's concerns in relation to the Consultation Paper's proposals

For R&D activities to be eligible under the current regime, they must contain 'innovation' or 'high levels of technical risk'. In relation to Principle 6 of the Consultation Paper, inserting the word 'and' raises a concern as to the implications of moving away from a now well-established working definition of R&D. We believe this will add complexity for claimants and administrators.

Yancoal accepts that some narrowing of the current definition of core R&D activities may be necessary to deliver on the Government's commitment to increased concessional rates and refundability. The abolition of the 175% Premium Concession will certainly go a long way to delivering on these commitments and we encourage the Government to minimise changes to the definition – this will be key to 1) predictability of benefit (crucial for additionality) and; 2) simplicity, both in preparing claims and administering the program.

One key area of needed consistency is in relation to the meaning of the terms - the retention of the current meanings of innovation and high levels of technical risk is highly desirable. Given the significant case law along with Innovation Australia and ATO guidance that has been well adopted by Yancoal, retaining the current meanings will provide much needed certainty moving into the new program.

Our greatest concern specifically relates to the proposal to limit supporting activities. That is, **we strongly reject Principle 7.**

Under the new R&D Tax Incentive program, Yancoal's R&D program will involve a series of highly innovative modifications to our technology that will require R&D trialling in a live mining environment. We are concerned that these activities will not receive the appropriate benefits from the new program. For Yancoal, supporting activities are significant and a valid component of the R&D program. If trialling activities attracted less R&D support, this would have a major impact on our ability to undertake core R&D and will be detrimental our ability to expedite this project.

Our view is that the current definition of supporting activity, and in particular, the requirement for it to be for 'a purpose' directly related to the carrying out of core R&D activities is adequate in:

- 1) restricting the types of supporting activities that can be claimed through the need to demonstrate a close and direct nexus to the core R&D activities; and
- 2) still providing incentives for R&D projects that legitimately need the range of supporting activities in order to carry out the core R&D activities, perhaps because of the industry in which the R&D is conducted.

Additionally, it is clear that the Government wants to reduce the compliance and administration burden on companies through its submission in the Consultation Paper under Principle 4. However, we note that all of the options proposed for supporting activities require the segregation of all R&D activities into core and supporting. This inevitably will create an unnecessary administration burden on companies and will inappropriately direct resources away from the R&D activities.

We will now highlight our opinion on specifically why each of the five options presented in limiting supporting activities will have adverse affects to Yancoal's ability to access the incentive for critical parts of their R&D program and inturn will limit Yancoal's ability to conduct R&D activities in the future.

#### Option (a): Capped as a proportion to core R&D

Different industries and projects will have different requirements for supporting activities. Capping supporting activities will disadvantage industries where the type of R&D conducted is trial-intensive and where it's commercially sensible to conduct R&D trials intermingled with the normal operations of the business.

For Yancoal, significant trialling work will need to be conducted to continue the core R&D activities and prove the modified technology. It is envisaged that significant expenditure will need to be spent on these activities and this option would severely impact the benefits received, which will inturn detrimentally affect the core R&D activities. If this option were chosen, the modifications to the technology that would greatly benefit the entire Australian community would be at risk of not proceeding without the appropriate R&D incentives, or in the very least, not proceeding as speedily as desirable.

In addition, it would not be possible to forecast the expected R&D Tax Credit benefit until a review of expenditure is undertaken at the completion of the R&D project. It will lead to adjustments having to be undertaken each year to ensure the correct ratio is calculated. Further adjustments may then be needed at project completion adding to the administration burden for the claimants.

#### Option (b): Sole purpose test

A 'sole purpose' test has the potential to eliminate almost all non-core R&D activities (including all R&D-related trials) from being eligible R&D activities, as very few activities are undertaken for just the one purpose. While our project is highly innovative, we are concerned that the R&D benefits in the trialling and commissioning phases of the project would be severely restricted and in turn would limit our ability to invest in core R&D activities. For the reasons already listed, supporting R&D activities are an integral part of most core R&D programs. While it is true that, as a matter of common business sense, trials may be undertaken for R&D purposes while still maintaining some revenue-creating production, there are still significant levels of risk associated with most trials or other supporting activities. Through the conduct of trialling in our R&D projects, we will gain significant new knowledge that will foster on-going innovation and core R&D activities. Without these trialling activities and also R&D incentives from these activities, our R&D projects will be materially impaired. Under this proposal, no or few of these activities that provide vital support to core R&D would be eligible under this proposal, and this would have a substantial negative impact on promoting R&D within the business.

In addition, we believe that substituting 'predominantly' for 'sole' would not solve the problems with this option as it would again be a subjective test that would increase the complexity of administration for claimants.

#### Option (c): Exclusion of production or dual purpose activities

From our reading of the consultation paper, option (c) would operate similarly to option (b) – see comments above.

#### Option (d): Net expenditure

In our view, this option is impractical and unworkable. This option will pose a lack of certainty to claimants, given that the outcome of R&D is, by its nature unpredictable, and therefore to suggest that only 'net' R&D expenditure be eligible makes the R&D incentive impossible to predict in advance, rendering it irrelevant in business investment decisions. This option also presents measurement issues – how would "net expenditure" be measured? The feedstock provisions (using a similar principle) are unclear and problematic for claimants and administrators. Another problem with this option is predictability – for companies to be incentivised to undertake R&D in addition to what they would have in the absence of an incentive (i.e. the principle of additionality) the incentive must be predictable – companies will be unable to gain certainty on R&D benefits until well after the conduct of the related activities.



Furthermore, the Government should be encouraging businesses to be commercially successful in all of their R&D pursuits and this option would merely benefit those activities that have commercially failed.

Option (e): Lower rate of assistance

In our view, this option would also be impractical due to the onerous and unnecessary burden requiring companies to separately identify and cost core and supporting activities.

This option would adversely impact the R&D activities that we are conducting. As stated above, the greatest impact will be seen in the necessary trialling and commissioning phases. It is our view, that this option will reduce the incentives for companies to conduct these necessary activities and in turn reduce the number of spillover benefits. Companies should be incentivised to test their hypotheses and determine a viable solution that will benefit the broader Australian community and economy.

Conclusion

Yancoal strongly encourage the Government to reconsider its proposal to change the R&D definition, especially to supporting activities, as we do not believe these changes will deliver the Government's stated policy intent. If modelling indicates some tightening of the definition is required for affordability (ie revenue neutrality), our preference is that the definition of core R&D be limited (per Principle 6) rather than limitations to supporting activities. The limitation achieved by requiring core activities to be both innovative and have high levels of technical risk, will have an implicit limitation on what activities are then supportive of these activities. No specific limitation to supporting activities is required.

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

Yours faithfully

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Yancoal Australia Pty Ltd