

19th April 2010

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

By email rdtaxcredit@treasury.gov.au

Dear Mr McCulloch,

The new R&D Tax Incentive – Second Exposure Draft

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.

It is in this context that AMEC provides the following comments relating to the revised Exposure Draft on proposed changes to the R&D tax incentive scheme:

- The new definition of core R&D activity contains untested terminology, and therefore significant uncertainty exists regarding the level of activity that will be considered to meet the eligibility requirements.
- The definition of eligible support activities does not take into account R&D activities designed to fulfil multiple purposes in the context of production trials and exploration activity in particular. In a number of circumstances, support activities are still restricted to those conducted for the "dominant purpose" of supporting the core R&D. This overly restrictive definition will prevent significant genuine R&D undertaken by the mining industry from gaining any benefit under the Tax Credit.
- 'Production' is an undefined term which is further complicated by the use of 'directly related' activities for the 'production of goods and services'. No guidance is given regarding a timing of related activities. For example could a feasibility study for a processing plant be considered 'directly related' to the production of goods? The production activity exclusion may also prove overly restrictive on genuine testing of production facilities that happens during the development phase of the R&D process and provides a platform for full scale experimentation, observation and evaluation of new technologies. The dominant purpose requirement in a production setting will only allow tax benefits where inefficiencies are introduced by taking a plant off-line to ensure the dominant or sole purpose of operating the facility is for the R&D purpose.
- The proposed feedstock rules within the first exposure draft have been removed, however uncertainty remains in relation to the proposed feedstock provisions which are to be modelled on the existing Tax Concession rules.
- Consistent with the first exposure draft the depth and breadth of the regulator's administrative powers are quite broad and at odds with a self assessment system.

- The requirement to divide “core” and “supporting” activities when registering R&D activities will create an administrative burden upon the claimant.
- R&D grouping requirements will be imposed once ownership of an entity is 40% or higher, in contrast to the old law requiring ownership to exceed 50%.

Many of the above points have not been resolved from the first Exposure Draft ("ED"). Moreover, the greatest areas of concern for AMEC members continue to result from the dominant purpose requirement that will be imposed upon exploration and production activities. Although the second ED presents these exclusions in a different format from that of the first ED, the concerns that we have previously raised in our submission dated 1 February 2010 continue to be valid.

Yours faithfully,

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

Simon Bennison
Chief Executive Officer