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KPMG submission: Critical Minerals and Hydrogen Production Tax Incentive Consultation Papers

KPMG Australia (KPMG) welcomes the opportunity to respond to Treasury's consultation papers in relation to the Critical Minerals Production Tax Incentive (CMPTI) and Hydrogen Production Tax Incentive (HPTI) Consultation Papers (Consultation Papers).

KPMG's R&D Incentives and Grants team is dedicated to developing integrated advice aimed at supporting the growth ambitions of our clients. We work with our clients to understand their business needs and assist in delivering holistic advice that enables them to help reach their growth potential.

Our team assists some of Australia's most innovative companies gain access to government grants and incentives for R&D and other innovative activities primarily undertaken in Australia. Through these initiatives, we work with our clients to create long term value and assist in providing a competitive advantage for Australian companies.

KPMG supports the announcement of the CMPTI and HPTI and considers the eligible criteria outlined in the Consultation Papers to be reasonable for CMPTI and HPTI.

Certain areas outlined in the consultation papers such as the link to the Final Investment Decision (FID) should be more clearly defined as it relates to the incentive. Additionally, in relation to the proposed eligible expenditure for the CMPTI, we consider that depreciation connected to the processing of critical minerals should be treated as an eligible cost.

Where a co-administration model is adopted, learnings should be taken from the *Board of Taxation's review of the dual-agency administration model* and KPMG's associated

submission¹ to ensure the administrative framework is streamlined and efficient in order to realise the maximum benefit of the new incentives.

Our detailed comments are set out in the Appendix. We have responded to select questions only. Should you wish to discuss these issues or proposals further, please do not hesitate to contact us.

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¹ [Review of the dual-agency administration model - KPMG Australia](#)

Appendix

Paper 1: Critical Minerals Production Tax Incentive

Who is eligible?

Consultation Questions

1. Please provide any feedback on the proposed eligibility criteria.
2. What key factors would need to be accounted for in a definition of Final Investment Decision (FID) for the purposes of the CMPTI?
3. How long do you expect it will take for processing and refining facilities to reach first production following FID?

KPMG Response Q1-3

We consider the eligible entity criteria to be reasonable. The legislative provision could be modelled on the definition of R&D entity (section 355-35), which broadly includes body corporates incorporated under Australian law and body corporates incorporated under foreign law that are Australian tax residents. We haven't identified any significant benefit or detriment in allowing permanent establishments (also known as branches) to access this tax incentive.

We would like to understand the reasoning behind the use of a FID to determine eligibility. As a yet to be defined term, we are concerned that it may create uncertainties and like all newly defined terms, will take time for it to be readily understood by industry. The proposed CMPTI may be better served by well defined types of qualifying expenditure incurred on processing and refining of critical minerals at approved facilities in Australia.

The time between an investment decision in a facility and first production can vary depending on a range of factors, not all of which are within a corporation's control. Further, given the problematic nature of defining a FID, it may be better to determine qualifying expenditure based on whether it is 'on' creating a facility or actual production of critical minerals that meet the CMPTI's base criteria. For example, the ATO has largely limited eligible expenditure to expenditure that is on R&D activities.

Eligible expenditure

Consultation Questions

4. Please provide feedback on the proposed eligible expenditure.
5. Please provide feedback on where you draw the line between mining and primary processing and mid-stage processing.
6. Are there any competitive neutrality considerations to ensure the CMPTI treats different projects fairly and does not distort commercial decision-making? For example,

how should capital costs for power generation be treated for facilities that produce their own power?

7. What, if any, transport costs should qualify? How could a sensible boundary between eligible and ineligible transport costs be drawn?

8. What reagent costs should be eligible?

9. What costs associated with the treatment, enrichment or disposal of waste should be included? Why?

10. What structures are likely to be adopted in critical minerals processing that could give rise to related party transactions? How should related party dealings be treated under the CMPTI?

11. What intellectual property (IP) arrangements are adopted by critical minerals processors? What treatment should apply to the payment of royalties? What measures could be put in place to manage integrity risks?

KPMG Response Q4-11

In relation to the proposed eligible expenditure, we consider that depreciation connected to the processing of critical minerals should be treated as an eligible cost. The consultation paper states that depreciation is excluded (along with a number of other costs) *“to ensure public investment is targeted at the value-adding downstream processing activity and avoids support for costs incurred regardless of the level of processing”*. It is not clear to us how the exclusion of depreciation is in keeping with this statement. Taxpayers will have acquired depreciating assets specifically for the purpose of using the assets in order to undertake one or more steps associated with downstream processing (i.e. the assets would not be acquired if no processing activities were being undertaken). The R&D and film tax offset rules both allow depreciation claims. The US approach to the Advanced Manufacturing Production Credit also appears to treat depreciation as eligible expenditure.

Similarly, we would expect necessary consumables (i.e. reagents) and other on-costs to be eligible. Processing and production of critical minerals is capital intensive and for the proposed tax incentive to be workable, it will need to have relatively broad application to the costs associated with processing and production. To unduly limit eligible expenditure and exclude depreciation and other necessary costs will likely render this tax incentive ineffective.

At the same time and in keeping with Australia’s commitment to our environment and climate, costs associated with the treatment and disposal of waste in Australia should also qualify. Specifically, extending the tax incentive to Australian treatment and disposal of waste should create downstream benefits to Australia and should also help prevent offshoring of treatment and waste to other countries, especially those with less oversight or regulation.

In relation to related party dealings, we consider that it would be reasonable to apply rules consistent with the R&D integrity provisions (i.e. Subdivision 355-F) as well as the associated ATO public guidance to transactions / arrangements between related parties.

Eligible outputs

Consultation Questions

12. Which critical minerals are currently processed in Australia? To what grade?
13. Of Australia's 31 critical minerals, what are the current common market requirements for processed outputs?
14. What is the form of the raw critical mineral when it arrives at your facility and what is its state when it leaves your facility?
15. Can you provide details on the full workflow process to convert the raw critical mineral to the endproduct(s) in your facility? Does the workflow process involve beneficiation?
16. What are the associated costs (e.g., reagents and consumables, labour, utilities, maintenance, logistics/transport, waste, etc.) for each processing stage undertaken in your facility?
17. Does the end product undergo any further processing after it leaves your facility? Can you provide more details regarding the next steps and/or process?
18. To what extent are different minerals processed together e.g., from the same raw material? What considerations does this give rise to for the application of the CMPTI?
19. What is a sensible approach to apportionment of mixed-use costs?

KPMG Response Q12-19

Australia is currently the largest global producer of lithium, however most lithium produced is in the form of spodumene concentrate (a primary product) sent overseas for further mid and downstream processing. Emerging processors such as Tianqi and Albemarle are in the process of finalizing their facilities for production of the midstream product lithium hydroxide, however, there is minimal lithium hydroxide production in Australia at the present time.

Australia is also a major producer of nickel, titanium and zirconium.

Nickel is mostly produced from the Archean nickel sulfide deposits present in Western Australia at a grade generally between 0.5 to 2% nickel, with some nickel increase from lateritic deposits in Western Australia and Queensland at lower grades. Nickel concentrates produced from these operations are then mostly sold to BHP for processing at one of the smelting and refining facilities.

Titanium and zirconium are produced from mineral sands throughout Australia. Titanium from ilmenite at 55-65% Titanium content are upgraded to synthetic rutile (<90% titanium) via a rotary kiln process. Zirconium of variable grade is separated from the remainder of the mineral sands using a variety of physical separation methods to

produce a pure zircon product. Nearly all zircon is sent overseas for further mid and downstream processing.

Australia is also a minor producer of antimony, cobalt, magnesium, manganese, molybdenum, PGE, REEs, tantalum and tungsten, mostly as by-products from production of other metals.

Critical minerals on the list that Australia currently has no measured production include: High Purity Alumina (HPA), arsenic, beryllium, bismuth, chromium, fluorine, gallium, germanium, graphite, hafnium, indium, niobium, rhenium, scandium, selenium, silicon, tellurium and vanadium.

It can be quite common for multiple critical minerals to occur in economic quantities geologically within the same deposit (for example, nickel and cobalt), so there will be a number of scenarios where multiple critical mineral mid-stream products will be produced from the same facility. It is worth considering what the incentive looks like for these scenarios, whether businesses can claim 10% of the value of both products, or whether the second product will attract a smaller benefit.

The approach to apportionment of mixed-use costs should comprise the provision of a rules framework that provides a level of certainty in relation to the appropriateness of apportionment methods while acknowledging that the 'right' method ultimately depends on the taxpayer's facts and circumstances. As such, as a priority matter the ATO should provide guidance in relation to potential appropriate methods and could be modelled on other tax incentives such as the R&D Tax Incentive.

Administrative arrangements

Consultation Questions

20. Please provide feedback on the proposed administration arrangements.
21. What testing certifications of processed minerals are common in industry?
22. Do businesses regularly rely on commodity contracts to evidence the purity of the commodities being exchanged?
23. Do current facilities fail processed mineral purity tests? If so, how often?

KPMG Response Q20-23

Where a co-administration model is adopted, learnings should be taken from the dual agency model of the R&D Tax Incentive to ensure the administrative framework is streamlined and efficient in order to realise the maximum benefit of the CMPTI. In particular, consideration should be given to the Board of Tax's [review](#) of the R&D Tax Incentive dual agency model, and specifically the recommendations for improvement.

KPMG's submission to the Board of Taxation's Review sets out 27 recommendations at section one². KPMG's recommendations include providing clarification on the roles and

² [Review of the dual-agency administration model - KPMG Australia](#)

responsibilities of the administrators, the publication of AusIndustry metrics or key performance indicators, the development of a R&D Tax Incentive Customer Charter, archiving superseded guidance to ensure previous guidance is publicly available and the allocation of a single case manager or liaison person who can help coordinate administrator reviews and other interactions. Many of these recommendations may be relevant when developing the new incentives.

These include a publicly available Program Charter that sets out expectations and roles of all parties, and transparent and clear timeframes for administrator findings and ensuring that administrative processes (including reviews and audits) are not duplicated.

In terms of testing certifications, we can see a role for DISR in setting (or updating) certification requirements and in keeping records to ensure program participants meet program requirements.

Community benefit principles

Consultation Questions

24. What obligations should be imposed on potential recipients of the CMPTI to ensure the community benefit principles are met?

25. What obligations are potential recipients of the CMPTI currently subject to that might support the community benefit objectives (noting these will be finalised under the Future Made in Australia Act)?

26. Are there any additional objectives that you consider important? What obligations might support these?

27. Recipients of the CMPTI may be subject to additional transparency and disclosure requirements in order to be eligible. What kind of requirements are appropriate? What are the key practical considerations to take into account when setting the requirements?

28. How should entities proposing to claim the CMPTI be required to demonstrate compliance with tax obligations?

29. What information do you think should be reported publicly on the recipients of the CMPTI and the amount of credit received?

30. Who should the reporting requirements be imposed on? For example, on the recipient entity, or central reporting through a regulator?

KPMG Response Q21-30

The [Statement of Tax Record](#) requirement for businesses seeking to tender for government contracts over \$4 million could be used by CMPTI claimants to demonstrate compliance with tax obligations, given it confirms that the taxpayer is up to date with registration requirements, has lodged 90 percent of its tax filings and has committed to paying tax debts by the due date or has a payment plan in relation to the debt

In relation to public reporting, this could comprise ATO publication of CMPTI data, similar to existing corporate tax transparency and R&D tax transparency reporting. These

frameworks include mechanisms for taxpayers to correct errors, as well as guidance which aims to ensure the data is not misinterpreted – both of these should be included in any CMPTI reporting. We consider central reporting through a regulator to be appropriate, given the data would be readily available to the ATO and would ensure consistent form of information, while also reducing the compliance burden for the claimant.

We note that CMPTI claimants may also be subject to existing confidential country-by-country (CbC) reporting and proposed public CBC reporting, depending the size of the business.

Paper 2: Hydrogen Production Tax Incentive (HPTI)

Who is eligible?

Consultation Questions

1. Please provide any feedback on the impact this incentive may have on your community, facility or industry.
2. Please provide any feedback on the proposed eligibility criteria.
3. What key factors would need to be accounted for in a definition of an eligible facility for the purposes of the HPTI?
4. What key factors would need to be accounted for in a definition of Final Investment Decision (FID) for the purposes of the HPTI?
5. How long do you expect it will take for projects to reach first production following FID?
6. For foreign investors, do you currently encounter any impediments to investment in projects that would be eligible?

KPMG response Q1-6

We consider the eligibility criteria for entities and facilities to be reasonable, however the link to FID should be defined as it relates to the incentive. Each company may have differing internal milestones that define FID – definition of FID in the Incentive guidelines may help resolve this issue. Additionally, the time taken for first production post FID will differ greatly for taxpayers depending on the size of the business, the effectiveness of, and economic conditions during, capital raising activities.

Alternatively, the HPTI may be better served without reference to a FID and instead rely evidence that the expenditure is incurred on activities that either result (or are likely to result) in qualifying hydrogen production. This would avoid potential confusion over the definition of a FID and instead rely on existing and well understood tax terminology.

Furthermore, new hydrogen production projects are particularly capital intensive in the years leading up to production as the cost of electrolyzers, hydrogen storage facilities

and additional plant equipment are all required ahead of first hydrogen production. As the proposed HPTI is retrospective, in the sense that it provides an offset for produced hydrogen, the program may not provide the incentive necessary for new businesses to accelerate project development as it is the front-end investment that is currently delaying these projects – particularly with 10MW electrolyser being the minimum capacity for eligible entities.

For foreign investors, the same considerations will typically apply – the timeframe between investment and commercial production, along with timing of potential government incentives such as the HPTI. The higher the cost and the longer the timeframes, the less interest there will be. On that basis, a tax incentive that is paid on produced hydrogen will be less attractive than one paid on expenditure leading to production.

What is eligible production?

Consultation Questions

7. Please provide any feedback on the proposed emissions intensity threshold of 0.6kg of carbon dioxide equivalent up to the production gate.
8. Other than electrolysis, what production processes would meet this emissions intensity threshold now or before 2030?
9. Please provide feedback on the proposed minimum capacity requirement (equivalent to 10 MW electrolyser)?
10. For renewable production processes other than electrolysis, is using the minimum capacity requirement of “equivalent to a 10MW electrolyser” appropriate? Is another definition of capacity required to deal with other production pathways?
11. Should grid connected electrolyser projects be required to match their hydrogen production with electricity generated by the same electricity grid? Please provide feedback on this proposal.
12. Please provide feedback on the proposal to not include additional requirements on renewable energy generation for access to the incentive, such as additionality and hourly time-matching with hydrogen production.

KPMG response Q7-12

We consider that 0.6kg of CO₂e up to the production gate is a good starting point, however renewable hydrogen production technology may advance significantly between now and 2040, when this incentive is set to end. As such, the CO₂e threshold may need to be adjusted in future years.

Other than electrolysis, production methodologies such as methane pyrolysis (thermal, catalytic, microwave) and plasma electrolysis may also achieve hydrogen production within the 0.6kg CO₂e threshold as these methods produce a solid carbon byproduct from methane, rather than CO₂.

Having a minimum capacity of 10MW electrolyser capacity to access the incentive may reduce the ability of smaller hydrogen start-ups, or companies implementing a staged hydrogen production approach from accessing the incentive. For example, as the up-front cost of a 10MW electrolyser could be prohibitive for a small company, they may instead elect to install a 5MW electrolyser for initial production. Once the company is revenue generating, they may then choose to install additional capacity.

We recommend that the ability for smaller companies to access this tax incentive, including barriers such as electrolyser capacity be considered when setting any minimum requirements.

Administrative arrangements

Consultation Questions

13. Please provide any feedback on the proposed administrative approach.
14. The proposed GO scheme will be used to support the registration and verification of hydrogen production. Are there any additional factors that would need to be accounted for in the proposed design of that scheme?
15. The Government may legislate the administrative arrangements in subordinate legislation. Please provide any feedback on this proposed approach.

KPMG response Q13-15

In relation to the co-administration approach, please see our CMPTI comments above regarding learnings that should be taken from the dual agency model of the R&D program.

Community Benefit Principles

Consultation Questions

16. What obligations should be imposed on potential recipients of the HPTI to ensure the community benefit principles are met?
17. What obligations are potential recipients of the HPTI currently subject to that might support the community benefit objectives (noting these will be finalised under the Future Made in Australia Act)?
18. Are there any additional objectives that you consider important? What obligations might support these?
19. Recipients of the HPTI may be subject to additional transparency and disclosure requirements in order to be eligible. What kind of requirements are appropriate? What are the key practical considerations to take into account when setting the requirements?
20. How should entities proposing to claim the HPTI be required to demonstrate compliance with tax obligations?
21. What information do you consider important for the community that should be reported publicly on the recipients of the HPTI such as the amount of credit received?

22. Who should the reporting requirements be imposed on? For example, on the recipient entity, or central reporting through a regulator?

KPMG response Q16-22

Please see our CMPTI comments above in relation to use of the statement of tax record and public reporting requirements.

Interaction with other government incentives

Consultation Questions

23. Please provide feedback on the proposed treatment of the interactions between the HPTI and other forms of Commonwealth, State or foreign government support.

24. How can the HPTI best leverage other types of support? Please provide examples relevant to your project if possible.

25. What are the key practical considerations with receiving support through the HPTI and the Hydrogen Headstart program simultaneously?

26. Are there specific interactions with other support programs that should be considered?

KPMG response Q23-26

Most tax incentives are designed to either exclude other incentives (i.e the same dollar can't be claimed under more than one incentive) or with some form of clawback mechanism (e.g. R&D Tax Incentive includes a clawback adjustment where the same R&D expenditure is the subject of a government recoupment). Ultimately whether the HPTI should include similar exclusions/clawbacks is a question for government.

However from an industry perspective, every dollar counts and the ability to access more than one program to accelerate hydrogen production will be very attractive, especially given programs like Headstart and the R&D Tax Incentive have different objectives and economic drivers.

If the primary objective is to accelerate hydrogen production, then allowing corporations to access or overlay programs will help achieve that, but will do so at a slightly higher cost to the public purse. If the intent is to limit or prevent corporations from accessing or overlaying programs, then we recommend similar exclusions or clawbacks such as those found in the R&D Tax Incentive are utilised