

24 October 2014



General Manager
Law Design Practice
The Treasury
Langton Crescent
PARKES ACT 2600

Attention Antony Pietsch

Dear Sir / Madam

**EXPLORATION DEVELOPMENT INCENTIVE – EXPOSURE DRAFT LEGISLATION
AND EXPLANATORY MEMORANDUM**

Thank you for the opportunity to comment on the Exploration Development Incentive (EDI) Exposure Draft Legislation and Explanatory Memorandum.

As the peak national industry body for mining and exploration companies throughout Australia, the Association of Mining and Exploration Companies (AMEC) greatly appreciates the close engagement and consultation to date with Treasury, the Australian Taxation Office and the Department of Industry. We have particularly appreciated the opportunity to have several face to face meetings and teleconference discussions at short notice during the design phase of the EDI.

Industry continues to strongly support the EDI initiative as a means to address the market failures that are the tax asymmetries that deny junior mineral exploration companies with insufficient taxable income the full benefit of immediate deductibility of exploration expenses.

Industry considers the EDI to be a long term investment strategy to discover the mines of tomorrow and generate future revenue streams and create jobs throughout Australia. Combined with the repeal of the mining and carbon taxes, the EDI should restore industry confidence and increase exploration investment in Australian mineral projects.

The following specific comments are made in respect of the Exposure Draft legislation, all of which were discussed during a teleconference with Treasury on 21 October 2014:

1. Exposure Draft 418-1 – What this Division is about

The box on page 2 states that '*greenfield minerals exploration can create, and then issue, exploration credits for their greenfields minerals expenditure for the 2015-16, 2016-17 and 2017-18 income years*'.

The dates quoted should read 2014-15, 2015-16 and 2016-17.

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2. Exposure Draft 418-70 – Entities that may create exploration credits

AMEC supports the reference to the lodgement of a declaration in the approved format on or before 30 September.

This is considered to be an appropriate and reasonable date for companies with standard July to June accounting periods to make such a declaration.

Based on its own research AMEC understands that there are comparatively few companies with a Substituted Accounting Period. In any event several would be ineligible to access the EDI in view of their non-Australian exploration activities.

This issue should be clarified in the Legislation and Explanatory Memorandum, i.e. whether included or excluded, and if included, how the EDI will apply to them.

3. Exposure Draft 418-70 – Entities that may create exploration credits

In the example provided in the Explanatory Memorandum - Clause 1.87 reference is made to the fact that the Commissioner will determine the modulation factor by 1 November.

AMEC is supportive of the need for an early announcement in relation to the important modulation factor. It is therefore fundamental that the date on which the Commissioner should make an announcement should be enshrined in the draft legislation.

This will provide companies and investors with some certainty on a critical decision point in the EDI process.

4. Exposure Draft 418-75 – Meaning of greenfields minerals explorer

AMEC is concerned with the exclusion under subsection (1)(d) – *'has carried on any mining operations on a mining property for extracting minerals (except petroleum) from their natural site, for the purpose of producing assessable income'*.

AMEC originally suggested a 'no taxable income' test to ensure that the EDI was only available to junior explorers. To add a further integrity measure AMEC suggested that companies with 'assessable income' from mining activities should be excluded.

Ultimately the EDI should not be available to mining companies (or companies in development), so the exclusion should just be activities based.

In this regard and to avoid any confusion or ambiguity, some clarity should be provided in the Explanatory Memorandum and Regulations on the definition of what constitutes *'mining operations'* to acknowledge the changing circumstances that a company might go through during its life cycle (e.g. divested or shut down its mining operations and now pursuing a greenfields project, backdoor listings etc).

Lastly and to clarify, this exclusion was intended to refer to the same income year, and not previous income years. Including previous years would create an unnecessary compliance burden on taxpayers.

The Exposure Draft should be amended to make this clearer.

5. Exposure Draft 418-80 – Meaning of greenfields minerals expenditure

Clause 418-80(1)(b) makes reference to expenditure incurred under subsection 40-730(1) would be deductible for the purposes of the EDI, with various exclusions listed under subclause (3).

AMEC considers that the current draft is confusing and likely to lead to non compliance and misinterpretation, particularly with the allocation of working hours and administration / corporate overheads.

In previous submissions AMEC has consistently stated that eligible exploration expenditure should be confined to those activities currently detailed in ITAA 40-730(4)(a)(i) ie costs directly connected with exploration activities excluding any overhead allocation, people time and costs of an administrative nature. This includes '*geological mapping, geophysical surveys, systematic search for areas containing minerals, and search by drilling and other means for such minerals within those areas*'. This definition excludes feasibility studies as currently described in ITAA 40-730(4)(c).

The Exposure Draft and the Explanatory Memorandum should be re-written, as above, to make it clearer on what is included, and what is excluded for the purposes of eligible exploration expenditure.

6. Exposure Draft 418-80 – Meaning of greenfields minerals expenditure

Subclause (2)(c) should not apply to deferred 'farm in' arrangements, i.e. where the farmee may become the holder of the right after incurring the exploration expenditure.

A separate section should be included for such arrangements so the farmee (normally a junior explorer) obtains the EDI as they would incur the exploration expenditure and therefore require the external funding. This is outcome is consistent with the income tax approach adopted by the Commissioner in MT 2012/2.

The Exposure Draft and the Explanatory Memorandum should be updated.

7. Exposure Draft 418-80 – Meaning of greenfields minerals expenditure

Subject to earlier comments, under Point 5 above, the words in lines 12 and 13 on page 11, '*or an ore reserve that is at least probable*' should be deleted.

The words '*or ore reserve*' in line 23 should be deleted.

8. Exposure Draft 418-80 – Meaning of greenfields minerals expenditure

Clarity is required around what is meant by 'an area' in subclause (3)(d). Guidance should be provided in the Explanatory Memorandum and Regulations including the possibility that an area may contain two different commodities at different stages of exploration activities eg a tenement with an Inferred Resource for gold is subsequently drilled for a potential copper anomaly. The greenfields expenditure for copper in that area should be deductible for the purposes of the EDI.

9. Exposure Draft 418-80 – Meaning of greenfields minerals expenditure

Reference is made in the Exposure Draft and the Explanatory Memorandum to the 2012 edition of the JORC Code.

As previously advised, AMEC suggests that reference to the 2012 edition should be deleted as some companies have prepared their reports of mineral resources under an earlier version of the Code and have yet to re-report those resources under the 2012 edition.

10. Exposure Draft 418-80 – Meaning of greenfields minerals expenditure

As discussed during the teleconference it is not clear whether subclause (4) provides any value. A decision needs to be taken on whether to retain or delete it.

11. Exposure Draft 418-90 – Modulation factors

Further to the query raised in Point 1 above, clarity is required on whether the dates listed on page 13 also need to be amended.

12. Exposure Draft Part 2 – Other amendments 21

This consequential amendment seems to amend section 418-80, however, it is not clear what this amendment aims to achieve. This should be clarified.

13. Explanatory Memorandum - Example 1.4

In the last paragraph of the example on page 18, reference is made to '*GME Co foregoes an equivalent amount of its tax loss for 2014-15 - \$450,000 (calculated as the amount of exploration credits created (\$150,000) multiplied by the corporate tax rate for the relevant income year (0.30))*'.

It should be noted that the \$150,000 tax credit converts to \$500,000 tax loss and not \$450,000 as quoted in the example. It should also read \$150,000 'divided' by the tax rate, and not 'multiplied' by it.

Paragraph 4 in the example should read '*for 2014-15 to the Commissioner by 30 September 2015. On 28 September 2015...*'

14. Income tax treatment of the EDI offset

AMEC has previously raised a concern in respect of the possibility that a shareholder may be subject to tax on the value of the offset (AMEC submission dated March 2014). In this scenario, the value of the EDI would be severely diluted.

The Exposure Draft and the Explanatory Memorandum appear to be silent on this issue and should be updated.

15. Exposure Draft 418-85(3)

Treasury confirmed that the method statement in 418-85(2) requires the actual loss in the previous year to factor in subsequent year deductibility. This could create a risk for explorers if the loss recoupment rules are failed after the EDI is paid requiring an exploration company to potentially pay the excess exploration credit tax. The Explanatory Memorandum should confirm the intention and Exposure Draft could consider limiting the test period to the time up to the date the EDI is paid.

If you have any queries please do not hesitate to contact me.

In the meantime, I look forward to ongoing constructive consultation during the passage of the legislation; drafting of the underpinning Regulations, and Frequently Asked Questions; and implementation of the EDI as a matter of priority.

Yours sincerely



Simon Bennison
Chief Executive Officer

