



19th January 2017

Budget Policy Division
Department of the Treasury
Langton Crescent
PARKES ACT 2600

Email: prebudgetsubs@treasury.gov.au

Dear Sir / Madam

2017/18 Pre-Budget submission

Thank you for the opportunity to provide input to the 2017/18 Commonwealth Budget and Forward Estimates.

As the peak national industry body for hundreds of mining and mineral exploration companies throughout Australia, the Association of Mining and Exploration Companies (AMEC) has a direct interest in the outcomes of the Budget.

Please find **attached** a copy of the AMEC submission which focusses on the rollover of the Exploration Development Incentive (EDI) to the 2017/18 year and Forward Estimates, and essential legislative amendments.

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

Yours sincerely

A handwritten signature in blue ink, appearing to read "Simon Bennison".

Simon Bennison
Chief Executive Officer

Cc Senator the Hon Matt Canavan MP, Minister for Resources and Northern Australia
Senator the Hon Mathias Cormann, Minister for Finance
Hon Kelly O'Dwyer MP, Minister for Revenue and Financial Services
Senator Chris Back
Senator Dean Smith
Rick Wilson MP

Association of Mining and Exploration Companies

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Submission to Commonwealth Treasury

2017/18 Pre-Budget

ASSOCIATION OF MINING AND EXPLORATION COMPANIES

19 January 2017

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1. INTRODUCTION

Thank you for the opportunity to provide input to the 2017/18 Commonwealth Budget and Forward Estimates.

The Association of Mining and Exploration Companies (AMEC) is the peak national industry body representing hundreds of mining and mineral exploration companies throughout Australia.

In order to develop the mines of tomorrow and generate associated future Government revenue streams it is vitally important that more investment is made now in greenfield mineral exploration. Failure to do so will have serious implications for the wider Australian economy.

It is in this context that this submission is made with a focus of rolling over the funding associated with the Exploration Development Incentive (EDI).

2. EXECUTIVE SUMMARY

AMEC continues to fully support the objective of the EDI to incentivise investment in Australian greenfields mineral exploration, which has experienced a significant decline over a number of years.

In order to address this the Government has acknowledged the trend and committed \$100m to the EDI over three years ending 2016/17.

Based on contemporary research, it is fundamentally critical in the national interest that the EDI is endorsed as a long term recurrent program with a minimum annual funding level of \$40m. It is important to provide junior mineral exploration companies and their shareholders with certainty and predictability in a high risk and competitive investment environment.

In addition, to a rollover of the EDI beyond the 2016/17 year, it is essential that minor and simple legislative amendments are urgently made to improve the efficacy of the model in attracting new capital.

Independent Consultants (Oakton) have been commissioned by Government to undertake a review of the EDI. In its preliminary submission to the Consultants, AMEC recommended:

- 1. Urgent completion of the EDI review**
- 2. Rollover the EDI beyond 2016/17 with a new funding allocation of at least \$40m per annum for the 2017/18 year and Forward Estimates**
- 3. Support for the drafting and passage of the legislative changes**

It is crucial that these recommendations are adopted in their entirety.

3. KEY TRENDS

The mining and mineral exploration industry has continued to experience considerable financial and economic pressures, falling commodity prices, massive unemployment, reduced international competitiveness and capital investment going to offshore and competing projects.

This has continued to be caused by:

- Lower discovery rates,
- High and increasing production and operating costs,
- Lower grades and higher strip ratio waste removal,
- Deeper deposits requiring increased pre-production expenditure and the subsequent higher mining and extraction costs, and
- Tighter margins.

Of particular concern is the fact that the share of greenfield mineral exploration drilling activity has been declining over the last decade (Table 1). Greenfield exploration expenditure is also at a 10 year low. These are significant signs as the mines of tomorrow are discovered through greenfield exploration (Table 2).

The number of mineral related Initial Public Offerings (IPOs) highlights the difficulties the majority of companies are experiencing in raising capital (Table 3). The high of 126 in 2007 has since seen a sharp decline in the number of mineral exploration IPOs to the extent that there has been only 12, 6, 3 and 8 in each of the last 4 years.

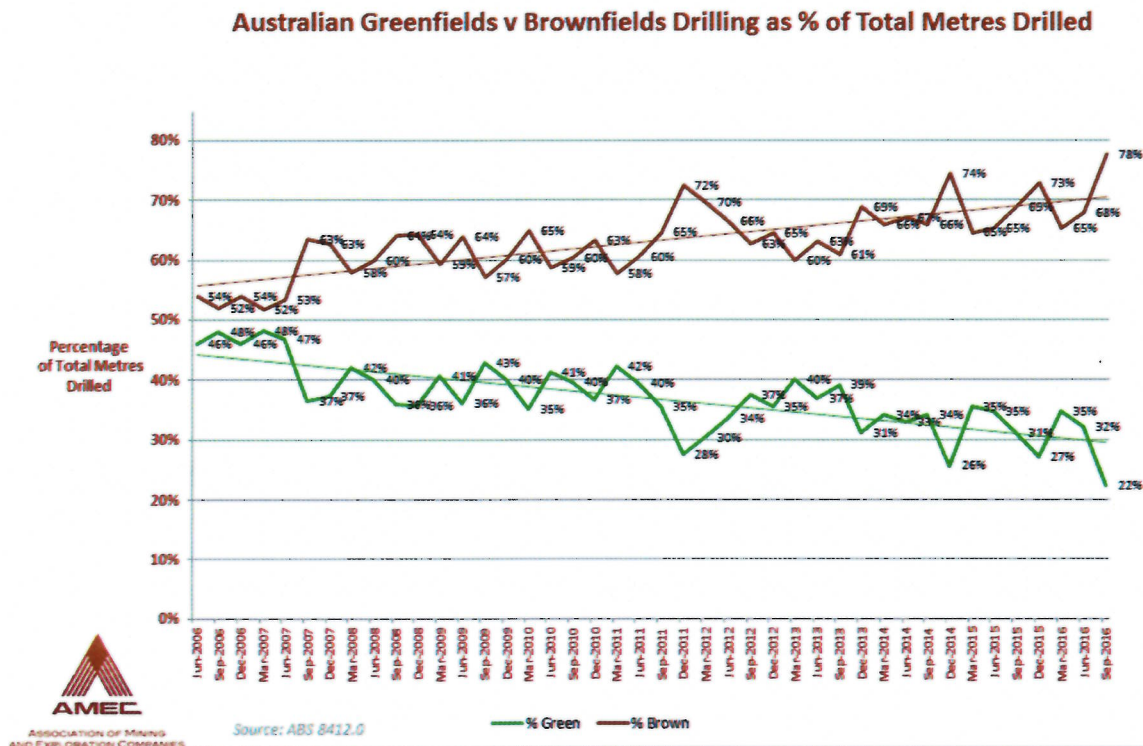


Table 1 – Share of metres drilled

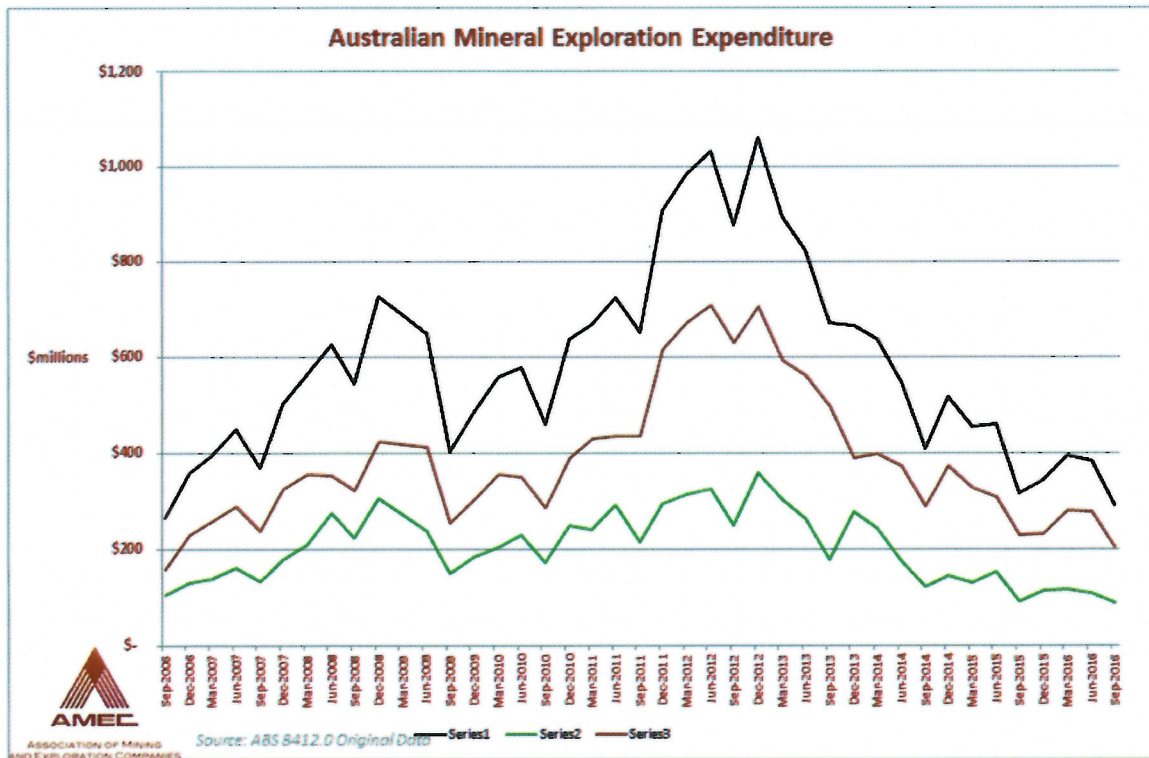


Table 2 – Share of exploration expenditure

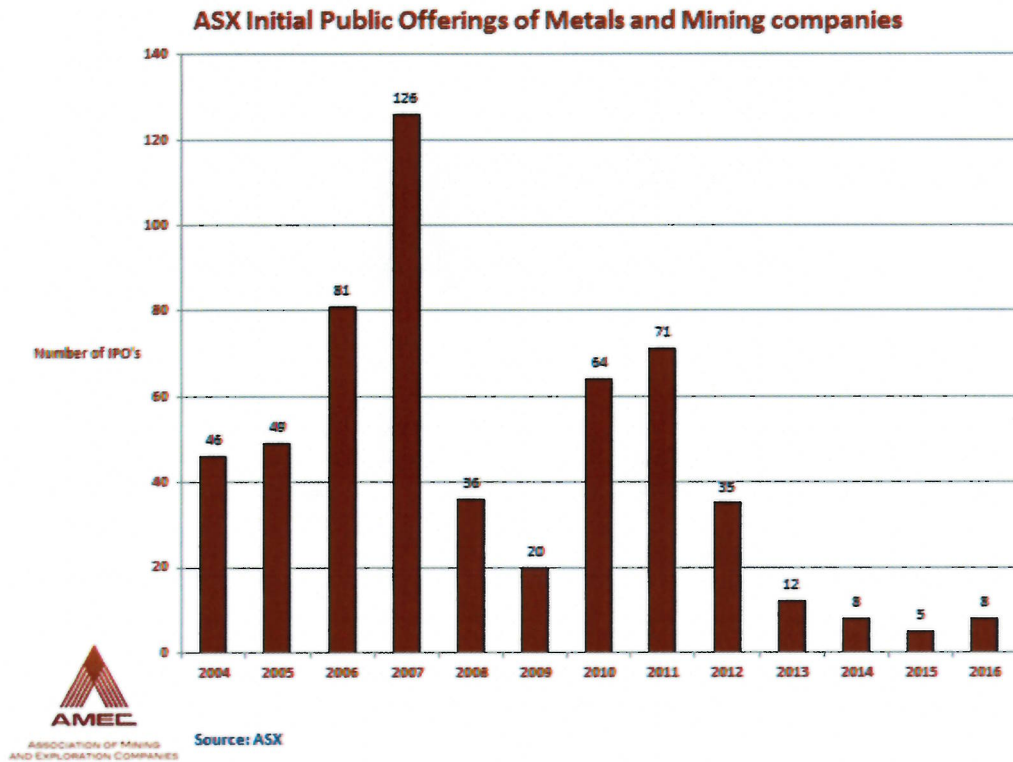


Table 3 – Number of mineral exploration IPOs

The number of ASX listed companies in the BDO Accountants Explorer Quarterly Cash Update quarterly series has reduced by 153 companies (representing nearly 18%) since September 2013 (when the research commenced). This is reflective of the state of the industry, and significantly reduces the probability of finding new deposits and the mines of tomorrow.

To place this in perspective *'the probability of finding an economic deposit on any piece of ground is 1/100, whereas finding one that is of 'world class' is 1/1000.'*¹

There is a growing number of international jurisdictions with mineral resources which are competing in the same market place as Australian producers. This is evidenced by the number of jurisdictions increasing 43% from 78 to 112 in the Canadian based Fraser Institute Survey over the last decade alone. Australia's share of global exploration spend has also reduced from 23% to 12% over that period.

A collaborative project between geoscience organisations and other stakeholders, including AMEC, is being currently being completed by Richard Schodde of MinEx Consulting. Extracts of the initial research are as follows for gold. Similar research is being undertaken in respect of other commodity types:

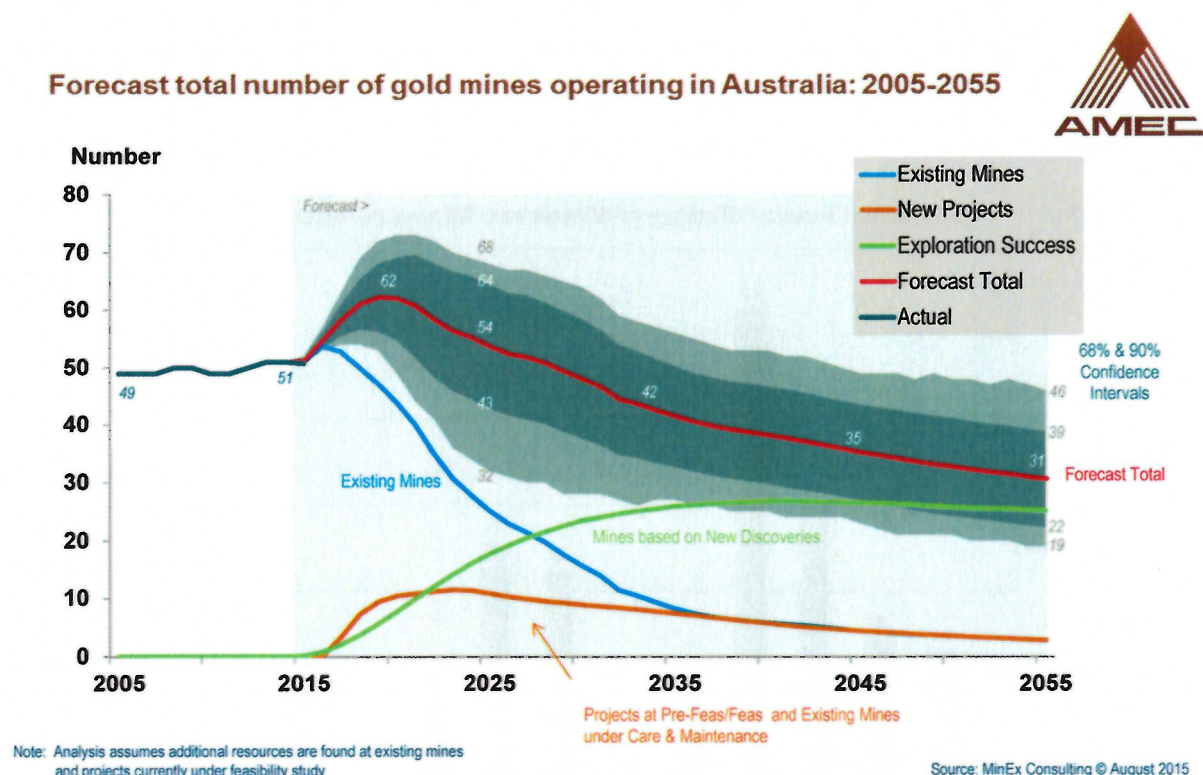


Table 4 – Forecast total number of gold mines operating in Australia

¹ Gold and Minerals Gazette – August 2008 edition – Editorial page 4

Forecast total gold production for Australia: 1995-2055

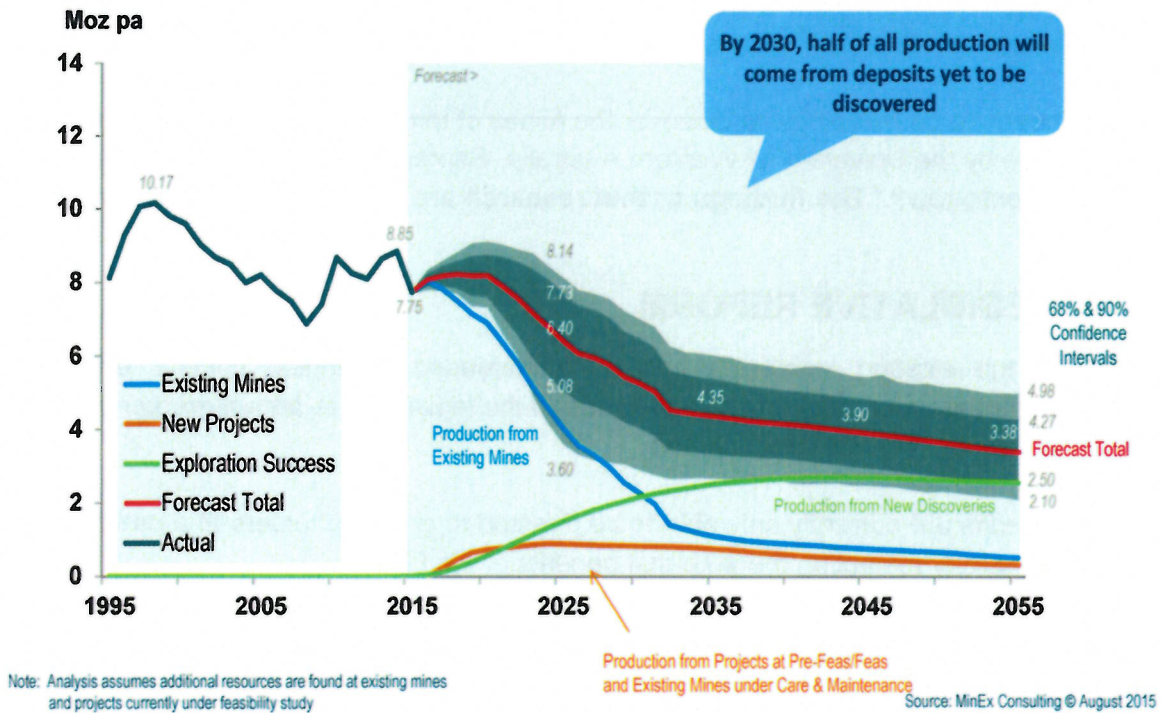


Table 5 – Forecast total gold production for Australia

Forecast total revenues for the Australian gold industry: 2005-2055

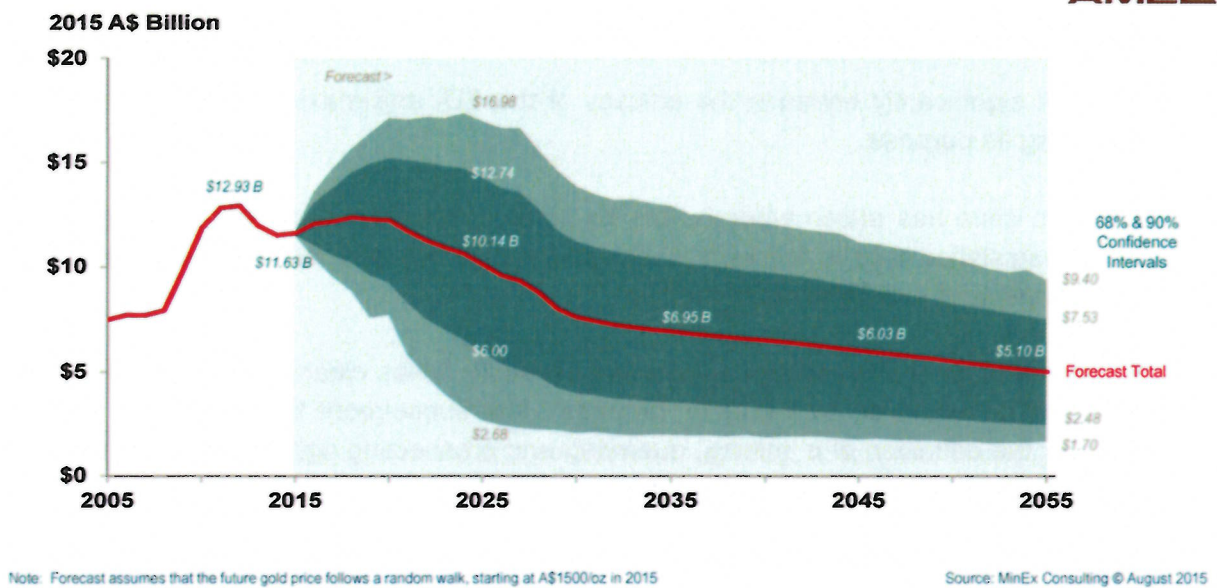


Table 6 – Forecast total revenues for the Australian gold industry

The trends in this initial research are extremely concerning as they clearly indicate significant reductions in production and Government revenue streams as existing gold mines reach the end of their current lives, and need to be replenished by new discoveries. The consequences of not doing so for gold and other commodity groups would not be in the national interest, and needs to be immediately addressed particularly in view of the long lead times between discovery to production (10/15 years, subject to commodity type, financial and non-financial barriers).

Action needs to be taken now to discover the mines of tomorrow, as described in the research undertaken by the University of Western Australia, September 2012 – “*Where are Australia’s mines of tomorrow?*.” **The findings of that research are even more relevant today.**

4. LEGISLATIVE REFORM

Although the existing legislation can drive increased greenfield mineral exploration in Australia, further improvements can be made to the legislation to attract greater capital to the EDI and thereby greenfield exploration.

1. EDI credits are currently only able to be directed to all shareholders at a particular record date, thereby restricting the potential benefits of the EDI.

The current wording in the legislation requires clarifying or modifying, such that the credits can be issued to new capital post 1 July 2014, as contemplated in the original pre-legislation consultation documentation.

The effect of the proposed AMEC amendments (**Appendix 1**) will be to give eligible companies the option, in any particular income year, to secure fresh capital from a group of investors by being in a position to offer exploration credits to those investors only. The new shares would be issued “cum entitlement” and convert to ordinary shares after 30 days following the issue of the EDI credit.

This will significantly enhance the efficacy of the EDI and maximise the likelihood of it achieving its purpose.

2. A further issue has arisen whereby the Exploratory Memorandum (EM)² supporting the original legislation is open to interpretation on the eligibility of a ‘farmee’ in a ‘farm-in-farm-out arrangement’ (FIFO) to claim the EDI.

During the original consultation period with Treasury it was clearly understood by AMEC that the EDI would be available to ‘farmees’. The subsequent EM confirmed this view however the definition of a ‘mining, quarrying and prospecting right’ (MQPR) contained in the EM is very wide and subject to interpretation.

² Page 97, paragraph 6.91

An AMEC member has recently been advised that it could not claim the EDI because its interest as a farmee did not meet the definition of a MQPR. As a consequence of AMEC intervention the ATO is further considering the issue.

In order to remove any doubt in the future, the legislation should be amended to explicitly allow a farmee to claim the EDI for its Australian eligible greenfields exploration. This could be simply achieved by amending section 418-80(3) of the Income Tax Assessment Act 1997 to include a farmee's interest in a FIFO arrangement.

These legislative amendments will remedy the two identified anomalies and improve the efficiency of the EDI.

Schedule 6—Exploration development incentive

Part 1—Main amendments

Income Tax Assessment Act 1997

1 Section 67-23 (after table item 23)

Insert:

27	exploration development incentive	the *tax offset available under Subdivision 418-B
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2 At the end of Part 3-45

Add:

Division 418—Exploration for minerals

Table of Subdivisions

	Guide to Division 418
418-A	Object of this Division
418-B	Exploration development incentive tax offset
418-C	Exploration development incentive franking credit
418-D	Creating exploration credits
418-E	Issuing exploration credits
418-F	Excess exploration credits

Guide to Division 418

418-1 What this Division is about

Generally speaking, you are entitled to a tax offset for exploration credits issued to you, but exploration credits issued to corporate tax entities instead give rise to franking credits.

For the 2015-16, 2016-17 or 2017-18 income year, a greenfields minerals explorer can create, and then issue, exploration credits for the explorer's greenfields minerals expenditure for the previous income year. However, the total amount of exploration credits for an income year is limited to the explorer's maximum exploration credit amount.

The explorer is liable to pay excess exploration credit tax if the explorer issues exploration credits in excess of that maximum exploration credit amount.

Note: Excess exploration credit tax is imposed by the *Excess Exploration Credit Tax Act 2015*, and the amount of the tax is set out in that Act.

Subdivision 418-A—Object of this Division

Table of sections

418-5	Object of this Division
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418-5 Object of this Division

The object of this Division is to encourage investment in minerals exploration in Australia by allowing the benefit of losses from minerals exploration to flow to shareholders who share in the risk of the exploration.

Subdivision 418-B—Exploration development incentive tax offset

Table of sections

Entitlement to exploration development incentive tax offset

- 418-10 Who is entitled to the tax offset—ordinary case
418-15 Who is entitled to the tax offset—life insurance company
418-20 Entitlement of member of a trust or partnership to a share of exploration credits

Amount of exploration development incentive tax offset

- 418-25 The amount of the tax offset
418-30 Reduced amount of the tax offset for certain trusts

Entitlement to exploration development incentive tax offset

418-10 Who is entitled to the tax offset—ordinary case

You are entitled to a *tax offset for an income year if:

- (a) an *exploration credit is issued to you under Subdivision 418-E for the income year; and
- (b) you are not:
 - (i) a *corporate tax entity; or
 - (ii) a trust (other than a trust in relation to which some or all of the liability of the trustee to tax is provided under subsection 98(1) or (2) or 99(2) or (3) of the *Income Tax Assessment Act 1936*); or
 - (iii) a partnership; or
 - (iv) an *exempt entity (other than an *exempt institution that is eligible for a refund); and
- (c) you are an Australian resident during the whole of that income year.

418-15 Who is entitled to the tax offset—life insurance company

- (1) An entity is entitled to a *tax offset for an income year if:
 - (a) the entity is a *life insurance company; and
 - (b) an *exploration credit is issued to the entity under Subdivision 418-E for the income year; and
 - (c) the entity is an Australian resident during the whole of that income year; and
 - (d) were the exploration credit to be a *franked distribution made:
 - (i) by the same entity that issued the credit; and
 - (ii) in the same circumstances in which the credit was issued;the exploration credit would be a distribution to which paragraph 207-110(1)(b) would apply.
- (2) If:
 - (a) an *exploration credit is issued to a *life insurance company; and
 - (b) paragraph (1)(d) applies in relation to only part of the exploration credit;this Division applies as if that part of the exploration credit, and the part of the exploration credit in relation to which that paragraph does not apply, were 2 separate exploration credits issued to the life insurance company.

418-20 Entitlement of member of a trust or partnership to a share of exploration credits

Members taken to be issued with exploration credits

- (1) If:
- (a) you are a *member of a trust or partnership during the income year; and
 - (b) an *exploration credit is issued to the trust or partnership under Subdivision 418-E for the income year; and
 - (c) the trust or partnership is not a *corporate tax entity; and
 - (d) the trustee of the trust, or the partnership, determines that you are entitled to a share of the exploration credits issued to the trust or partnership for the income year; and
 - (e) the trustee of the trust, or the partnership, gives you a statement, in accordance with subsection (4), informing you of that entitlement;
- you are taken, for the purposes of this Subdivision, to have been issued with an exploration credit under Subdivision 418-E, for the income year, of an amount equal to your share of the exploration credits issued to the trust or partnership for the income year.

Effect of restrictions on distributions

- (2) Despite subsection (1), you are not taken, under that subsection, to have been issued with an *exploration credit under Subdivision 418-E to the extent that, if the exploration credit referred to in paragraph (1)(b) were a *franked distribution of the same amount made:
- (a) at the time of the determination referred to in paragraph (1)(d); and
 - (b) in relation to the interest, held by the trust or partnership, in relation to which the exploration credit referred to in paragraph (1)(b) is issued to the trust or partnership during the income year;
- the terms and conditions under which the trust or partnership operates would not permit you to be paid the amount, or the proportion, of the franked distribution that would reflect your entitlement referred to in paragraph (1)(d).

Anti-avoidance

- (3) Despite subsection (1), you are not taken, under that subsection, to have been issued with an *exploration credit under Subdivision 418-E to the extent that, if the exploration credit were a distribution to you, from the trust or partnership, of a *franked distribution that:
- (a) was of the same amount as the amount of your share, referred to in paragraph (1)(d), of the exploration credit referred to in paragraph (1)(b); and
 - (b) was made:
 - (i) by the same entity that issued that exploration credit; and
 - (ii) in relation to the same interest in that entity; and
 - (iii) in the same circumstances in which that exploration credit was issued; and
 - (c) *flowed indirectly through one or more trusts or partnerships that were the same as the one or more trusts or partnerships that, apart from subparagraphs 418-10(b)(ii) and (iii), would have been entitled to a *tax offset under this Subdivision in relation to:
 - (i) that exploration credit; or
 - (ii) another exploration credit from which that exploration credit is directly or indirectly derived;
- you would not be entitled to a tax offset under Division 207 in relation to the franked distribution.

Statements to members

- (4) A statement referred to in paragraph (1)(e) must:
- (a) be in the *approved form; and
 - (b) be given to you on or before the due date:

- (i) if the trust or partnership is an *investment body for *Part VA investments— for giving to the Commissioner an *annual investment income report in respect of the *financial year corresponding to the income year; or
- (ii) otherwise—for the trust or partnership to lodge its *income tax return for the income year.

Reports to the Commissioner

- (5) A trust or partnership that has given one or more statements under paragraph (1)(e) relating to *exploration credits for an income year must give to the Commissioner, on or before the due date referred to in paragraph (4)(b) in relation to that income year, a report that:
 - (a) relates to all the statements that the trust or partnership has given under paragraph (1)(e) relating to exploration credits for that income year; and
 - (b) is in the *approved form.

Amount of exploration development incentive tax offset

418-25 The amount of the tax offset

The amount of your *tax offset under this Subdivision for an income year is the sum of:

- (a) all the *exploration credits issued to you under Subdivision 418-E; and
- (b) all the exploration credits taken under section 418-20 to have been issued to you; for the income year.

418-30 Reduced amount of the tax offset for certain trusts

- (1) If an entity is a trust in relation to which some, but not all, of the liability of the trustee to tax is provided under subsection 98(1) or (2) or 99(2) or (3) of the *Income Tax Assessment Act 1936*, the amount of the entity's *tax offset under this Subdivision for an income year is:

$$\text{The amount of the entity's *tax offset apart from this section} \times \frac{\text{Income taxed under subsection 98(1) or (2) or 99(2) or (3)}}{\text{The *net income of the trust for the income year}}$$

where:

income taxed under subsection 98(1) or (2) or 99(2) or (3) is the amount of the *net income of the trust, for the income year, in relation to which the trustee is liable to tax under subsection 98(1) or (2) or 99(2) or (3) of the *Income Tax Assessment Act 1936*.

- (2) If:
 - (a) an entity is a trust; and
 - (b) one or more *members of the trust are taken under section 418-20 to have been issued with one or more *exploration credits for an income year;the amount of the entity's *tax offset, under section 418-25 or subsection (1) of this section, for the income year is reduced by the sum of amounts of the exploration credits taken to be issued to those members.

Subdivision 418-C—Exploration development incentive franking credit

Table of sections

418-50	Exploration development incentive franking credit—ordinary case
418-55	Exploration development incentive franking credit—life insurance company

418-50 Exploration development incentive franking credit—ordinary case

- (1) A *franking credit arises in the *franking account of a *corporate tax entity (other than a *life insurance company) if:
 - (a) an *exploration credit is issued to the entity under Subdivision 418-E during an income year; and
 - (b) if the entity were not a corporate tax entity, the entity would be entitled to a *tax offset under Subdivision 418-B in relation to the exploration credit.
- (2) The amount of the *franking credit is the amount of the *tax offset to which the entity would be entitled under Subdivision 418-B if:
 - (a) the entity were not a *corporate tax entity; and
 - (b) no other *exploration credits were issued to the entity during the income year.
- (3) The *franking credit arises at the same time the *exploration credit is issued.

418-55 Exploration development incentive franking credit—life insurance company

- (1) A *franking credit arises in the *franking account of a *life insurance company if:
 - (a) an *exploration credit is issued to the life insurance company under Subdivision 418-E during an income year; and
 - (b) paragraph 418-15(1)(d) does not apply in relation to the exploration credit; and
 - (c) if that paragraph were to apply in relation to the credit, the life insurance company would be entitled to a *tax offset under Subdivision 418-B in relation to the exploration credit.
- (2) The amount of the *franking credit is the amount of the *tax offset to which the *life insurance company would be entitled under Subdivision 418-B if no other *exploration credits were issued to the life insurance company during the income year.
- (3) The *franking credit arises at the same time the *exploration credit is issued.

Subdivision 418-D—Creating exploration credits

Table of sections

418-70	Entities that may create exploration credits
418-75	Meaning of <i>greenfields minerals explorer</i>
418-80	Meaning of <i>greenfields minerals expenditure</i>
418-85	Exploration credits must not exceed maximum exploration credit amount
418-90	Modulation factors
418-95	Effect on tax losses of creating exploration credits

418-70 Entities that may create exploration credits

- (1) An entity may create *exploration credits* for an income year if:
 - (a) the entity was a *greenfields minerals explorer in the previous income year; and
 - (b) on or before 30 September in the *financial year corresponding to the income year, the entity has given to the Commissioner, in the *approved form, a declaration stating:
 - (i) their estimated *tax loss for the previous income year; and
 - (ii) their estimated *greenfields minerals expenditure, for the previous income year.
- (2) However, the entity cannot create the exploration credits:
 - (a) before the legislative instrument under section 418-90 declaring the modulation factor for the income year has been registered under Division 2 of Part 4 of the *Legislative Instruments Act 2003*; or

- (b) for the 2018-19 income year or a later income year.
- (3) A failure to comply with subsection (1) or paragraph (2)(a) does not invalidate the creation of an *exploration credit.
- (4) An *exploration credit is to be expressed as a monetary amount.
- (5) The entity cannot make more than one decision to create *exploration credits for an income year, and the decision is final and irrevocable.

418-75 Meaning of *greenfields minerals explorer*

- (1) An entity is a *greenfields minerals explorer* in an income year if:
 - (a) the entity has *greenfields minerals expenditure for the income year; and
 - (b) during the income year, the entity is a disclosing entity (within the meaning of section 111AC of the *Corporations Act 2001*); and
 - (c) during the income year, the entity is a *constitutional corporation; and
 - (d) during the income year, and during the immediately preceding income year, neither:
 - (i) the entity; nor
 - (ii) any other entity that is *connected with or is an *affiliate of the entity; 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.
- (2) However, an entity is not a *greenfields minerals explorer* in an income year in which either or both of the following happens, or in any subsequent income year:
 - (a) the entity fails to comply with a request of the Commissioner under subsection 418-80(5);
 - (b) a determination under section 418-185 has effect.

Note 1: Under subsection 418-80(5), the Commissioner may request a report on an area in relation to which an entity has greenfields minerals expenditure.

Note 2: Under section 418-185, the Commissioner may determine that an entity that is, or has been, liable to excess exploration credit tax is not to be treated as a greenfields minerals explorer.

418-80 Meaning of *greenfields minerals expenditure*

- (1) An entity's *greenfields minerals expenditure* for an income year is the sum of:
 - (a) the amounts of any deductions to which the entity is entitled under section 40-25 for that income year in relation to declines in value that:
 - (i) are declines in value of *depreciating assets used for *exploration or prospecting for *minerals in an area to which subsection (3) of this section applies; and
 - (ii) are worked out under subsection 40-80(1); and
 - (b) the amounts of any deductions for that income year to which the entity is entitled in relation to expenditure:
 - (i) that is of a kind referred to in subsection 40-730(1); and
 - (ii) in relation to which the entity satisfies one or more of paragraphs 40-730(1)(a) to (c); and
 - (iii) that is expenditure on exploration or prospecting for minerals in an area to which subsection (3) of this section applies.
- (2) For the purposes of subsection (1), disregard a deduction to the extent that it relates to:
 - (a) matters other than:
 - (i) declines in value of *depreciating assets used for; or
 - (ii) expenditure on;

- *exploration or prospecting for *minerals in an area to which subsection (3) of this section applies; or
- (b) exploration or prospecting for *petroleum or oil shale; or
 - (c) activities (such as feasibility studies) undertaken to identify the viability of a mineral resource rather than its existence.
- (3) This subsection applies to an area:
- (a) that is in Australia; and
 - (b) in relation to which the entity *holds a *mining, quarrying or prospecting right at the time of incurring the expenditure; and
 - (c) that has not been identified as containing a mineral resource that is at least inferred in a report prepared in accordance with the requirements of:
 - (i) unless subparagraph (ii) applies—the document that is known as the Australasian Code for Reporting of Exploration Results, Minerals Resources and Ore Reserves and that took effect on 20 December 2012; or
- Note: This document is commonly referred to as the JORC Code (2012 Edition).
- (ii) such other document as the regulations prescribe; and
 - (d) that is not, and is not in, any of the following:
 - (i) the coastal sea of Australia (within the meaning of subsection 15B(4) of the *Acts Interpretation Act 1901*);
 - (ii) an offshore area for the purpose of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;
 - (iii) the Joint Petroleum Development Area (within the meaning of the *Petroleum (Timor Sea Treaty) Act 2003*).
- Note: An offshore area and the Joint Petroleum Development Area include the territorial sea, the exclusive economic zone and the continental shelf of Australia.
- (4) For the purposes of paragraph (3)(c), disregard any mineral resource, identified in a report of a kind referred to in that paragraph, that does not include *minerals the exploration or prospecting for which involved:
- (a) use of assets referred to in paragraph (1)(a); or
 - (b) expenditure referred to in paragraph (1)(b).
- (5) The Commissioner may request an entity that is a *greenfields minerals explorer in an income year to prepare, within the period specified in the request, a report that:
- (a) is of the kind referred to in paragraph (3)(c); and
 - (b) relates to an area in relation to which the entity has *greenfields minerals expenditure for the income year.
- The request may specify the manner in which, and the form in which, the report is to be prepared.

418-85 Exploration credits must not exceed maximum exploration credit amount

- (1) An entity must not create *exploration credits for an income year (the **current income year**) of a total amount that exceeds the entity's *maximum exploration credit amount for the income year.
- (2) The entity's **maximum exploration credit amount** for the current income year is worked out as follows:

1. Method statement

- A. Step 1. Ascertain which of the following is the smallest amount:
- 1. (a) the entity's estimated *tax loss for the previous income year, as stated in the entity's declaration under paragraph 418-70(1)(b);
 - 2. (b) the entity's actual tax loss for the previous income year;

- 3. (c) the entity's estimated *greenfields minerals expenditure for the previous income year, as stated in the entity's declaration under paragraph 418-70(1)(b);
- 4. (d) the entity's actual greenfields minerals expenditure for the previous income year.
- B. Step 2. Multiply that smallest amount by the *corporate tax rate applying to the previous income year.
- C. Step 3. Multiply the result of step 2 by the modulation factor declared under section 418-90 for the current income year. The result of this step is the entity's **maximum exploration credit amount** for the current income year.

- (3) In working out the entity's actual *tax loss for the previous income year for the purposes of step 1 of the method statement in subsection (2), reduce that tax loss by the sum of:
 - (a) all *recoupments that the entity receives in relation to the entity's *greenfields minerals expenditure for the previous income year; and
 - (b) any part of the entity's tax loss for the previous income year that would not be deductible in the current income year; and
 - (c) if:
 - (i) an amount has been included in the entity's assessable income because a *balancing adjustment event occurs for a *depreciating asset; and
 - (ii) all or part of the amount of the deduction to which the entity is entitled under section 40-25 for the previous income year in relation to the decline in value of the asset is included in the entity's greenfields minerals expenditure for that income year;so much of the amount of that deduction as was included in that greenfields minerals expenditure.
- (4) For the purposes of paragraph (3)(b), assume that the entity's assessable income for the current income year is sufficient to allow the entity to utilise the whole of that tax loss in relation to the current income year.
- (5) In working out the entity's actual *greenfields minerals expenditure for the previous income year for the purposes of step 1 of the method statement in subsection (2), reduce that greenfields minerals expenditure by the sum of:
 - (a) all *recoupments that the entity receives in relation to the entity's greenfields minerals expenditure for the previous income year; and
 - (b) if:
 - (i) an amount has been included in the entity's assessable income because a *balancing adjustment event occurs for a *depreciating asset; and
 - (ii) all or part of the amount of the deduction to which the entity is entitled under section 40-25 for the previous income year in relation to the decline in value of the asset is included in the entity's greenfields minerals expenditure for that income year;so much of the amount of that deduction as was included in that greenfields minerals expenditure.
- (6) A failure to comply with this section does not invalidate the creation of an *exploration credit.

418-90 Modulation factors

- (1) The Commissioner must, by legislative instrument, declare modulation factors in accordance with this section for each of the following:
 - (a) the 2015-16 income year;
 - (b) the 2016-17 income year;

- (c) the 2017-18 income year.
- (2) The modulation factor for an income year is to be one if the Commissioner is satisfied that the total amount of *exploration credits that could be created in respect of that income year will not exceed the following amount (the *exploration credit cap*) for the income year:
- (a) for the 2015-16 income year—\$25 million;
 - (b) for the 2016-17 income year—\$35 million;
 - (c) for the 2017-18 income year—\$40 million.
- (3) If subsection (2) does not apply, the modulation factor for the income year is to be such a number as the Commissioner is satisfied would reduce the total amount of *exploration credits that could be created in that income year to the exploration credit cap for the income year.
- (4) In ascertaining for the purposes of subsection (2) or (3) the total amount of *exploration credits that could be created in an income year (the *current income year*), the Commissioner is to:
- (a) use the information provided in declarations under paragraph 418-70(1)(b) for the previous income year; and
 - (b) disregard the possible application of any modulation factor.
- (5) A failure to comply with subsection (2), (3) or (4) does not invalidate the declaration of a modulation factor for an income year.
- (6) A declaration made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the declaration.

418-95 Effect on tax losses of creating exploration credits

- (1) If an entity creates any *exploration credits in respect of a *loss year, the amount of the entity's *tax loss for the loss year is reduced by the amount worked out as follows:

$$\frac{\text{The sum of all the *exploration credits the entity creates in respect of the *loss year}}{\text{The *corporate tax rate}}$$

- (2) However, if the amount worked out under subsection (1) equals or exceeds what would (apart from this section) be the entity's *tax loss for the *loss year, that tax loss is taken to be nil.

Subdivision 418-E—Issuing exploration credits

Table of sections

418-110	Issuing exploration credits
418-115	Restricting exploration credits to post 1 July 2014 shares
418-120	Exploration credits to be issued on a proportionate basis
418-125	Expiry of exploration credits
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418-110 Issuing exploration credits

- (1) An entity that has created *exploration credits for an income year may issue any of those exploration credits to *members of the entity, in respect of *shares that:
- (a) are *equity interests; and
 - (b) are held by the members.

- (2) The *exploration credits are issued by giving each of the *members a statement in the *approved form.
- (3) The issuing of *exploration credits is of no effect unless:
 - (a) the statements under subsection (2) are given to the *members on or before the first 30 June after the day on which the modulation factor in respect of the income year is declared under section 418-90; and
 - (b) the issuing of credits complies with section 418-120.

418-115 Restricting exploration credits to post 1 July 2014 shares

- (1) An entity may, before it has issued any *exploration credits for an income year, choose to restrict the issuing of exploration credits in respect of some or all *shares that:
 - (a) are *equity interests;
 - (b) have been determined by the entity to be shares in respect of which members will be eligible to be issued exploration credits; and
 - (c) have come into existence on or after 1 July 2014.
- (2) A choice under this section with respect to exploration credits to be issued in an income year applies only to that income year.
- (3) A choice under this section is irrevocable.

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418-120 Exploration credits to be issued on a proportionate basis

- (1) An entity issuing *exploration credits for an income year must ensure that the total number of exploration credits issued to any *member of the entity for the year, expressed as a percentage of the total number of all exploration credits issued to the members of the entity for the year, is the same as:
 - (a) if the entity has made a choice under section 418-115—the total number of *shares in the entity that:
 - (i) are *equity interests held by the member; and
 - (j) have been determined by the entity to be shares in respect of which the member will be eligible to be issued exploration credits;expressed as a percentage of the total number of the shares in the entity that:
 - (iii) are equity interests held by any members of the entity; and
 - (iv) have been determined by the entity to be shares in respect of which members will be eligible to be issued exploration credits; or
 - (b) otherwise—the total number of shares in the entity that are equity interests held by the member, expressed as a percentage of the total number of the shares in the entity that are equity interests held by any members of the entity.
- (2) For the purposes of this section, the number of *shares that a *member holds in the entity is taken to be the number that the member held on the day occurring 30 days before the *exploration credits were issued.

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. (iv) have come into existence on or after the commencement of the relevant income yearthat day;

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418-125 Expiry of exploration credits

An *exploration credit created by an entity for an income year expires if the entity does not issue the credit under this Subdivision on or before the first 30 June after the day on which the modulation factor in respect of the income year is declared under section 418-90.

418-130 Notifying the Commissioner of issuing or expiry of exploration credits

- (1) An entity that has created *exploration credits for an income year must notify the Commissioner of the issuing or expiry of the credits.

- (2) The notice must:
- (a) be in the *approved form; and
 - (b) be given to the Commissioner on or before the due date:
 - (i) if the entity is an *investment body for *Part VA investments—for giving to the Commissioner an *annual investment income report in respect of the *financial year corresponding to the income year; or
 - (ii) otherwise—for the entity to lodge its *income tax return for the income year.

Subdivision 418-F—Excess exploration credits

Table of sections

418-150	Excess exploration credit tax
418-155	Due date for payment of excess exploration credit tax
418-160	Returns
418-165	When shortfall interest charge is payable
418-170	General interest charge
418-175	Refunds of amounts overpaid
418-180	Record keeping
418-185	Determining an entity not to be a greenfields minerals explorer

418-150 Excess exploration credit tax

An entity is liable to pay *excess exploration credit tax for an income year if the sum of the *exploration credits it issues for the income year exceeds the entity's *maximum exploration credit amount for the income year.

Note: The tax is imposed by the *Excess Exploration Credit Tax Act 2014*, and the amount of the tax is set out in that Act.

418-155 Due date for payment of excess exploration credit tax

An entity's *excess exploration credit tax for an income year, as assessed under Schedule 1 to the *Taxation Administration Act 1953*, is due and payable at the end of the day by which the entity is required under section 418-160 to give the return relating to the income year.

Note: For assessments of excess exploration credit tax, see Division 155 in Schedule 1 to the *Taxation Administration Act 1953*.

418-160 Returns

An entity that is liable to pay *excess exploration credit tax for an income year must give the Commissioner a return relating to excess exploration credit tax, in the *approved form, within 21 days after the end of the *financial year corresponding to the income year.

418-165 When shortfall interest charge is payable

An amount of *shortfall interest charge that an entity is liable to pay is due and payable 21 days after the day on which the Commissioner gives the entity notice of the charge.

Note: Shortfall interest charge is imposed if the Commissioner amends an assessment and the amended assessment results in an increase in some tax payable. For provisions about liability for shortfall interest charge, see Division 280 in Schedule 1 to the *Taxation Administration Act 1953*.

418-170 General interest charge

If:

- (a) *excess exploration credit tax or *shortfall interest charge payable by an entity remains unpaid after the time by which it is due and payable; and

- (b) the Commissioner has not allocated the unpaid amount to an *RBA; the entity is liable to pay the *general interest charge on the unpaid amount for each day in the period that:
- (c) starts at the beginning of the day on which the excess exploration credit tax or shortfall interest charge was due to be paid; and
- (d) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the excess exploration credit tax or shortfall interest charge;
 - (ii) general interest charge on any of the excess exploration credit tax or shortfall interest charge.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

418-175 Refunds of amounts overpaid

Section 172 of the *Income Tax Assessment Act 1936* applies for the purposes of this Division as if references in that section to tax included references to *excess exploration credit tax.

418-180 Record keeping

Section 262A of the *Income Tax Assessment Act 1936* applies for the purposes of this Division as if:

- (a) the reference in that section to a person carrying on a business were a reference to a *corporate tax entity; and
- (b) the reference in paragraph (2)(a) of that section to the person's income and expenditure were a reference to the entity's liability to pay *excess exploration credit tax; and
- (c) paragraph (5)(a) of that section were omitted.

418-185 Determining an entity not to be a greenfields minerals explorer

- (1) The Commissioner may determine, by written notice given to an entity that is, or has been, liable to pay *excess exploration credit tax for an income year, that the entity is no longer to be treated as a *greenfields minerals explorer.
- (2) The determination takes effect from:
 - (a) if, at the time the notice is given, the entity has not issued any *exploration credits for the income year in which the notice is given—that income year; or
 - (b) otherwise—the next income year.
- (3) If the entity or a *member of the entity is dissatisfied with a determination under subsection (1), the entity or member may object to it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.