3 October 2011

Tax Forum
Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

TAX FORUM 2011: SUBMISSION

The Chamber of Minerals and Energy of Western Australia (CME) welcome the opportunity to present a submission to the Tax Forum. This submission focuses on core taxation and policy issues affecting the resources industry and is not intended to be exhaustive.

While CME notes that the Terms of Reference of the Tax Forum exclude the Minerals Resource Rent Tax (MRRT), the carbon pricing mechanism of the *Clean Energy Future* package and the GST, CME has provided comment on these taxes as they directly affect either the resources sector or the WA economy.

1. CME AND THE WA RESOURCES SECTOR

CME is the peak resources sector representative body in Western Australia funded by its member companies who generate 95 per cent of all mineral and energy production and employ 80 per cent of the resources sector workforce in the State.

The Western Australian resources sector is diverse and complex covering exploration, processing, downstream value adding and refining of over 40 different types of mineral and energy resources. The sector is also a significant generator of power, predominantly for its own use. Besides being the largest private employer in regional and remote Western Australia, the sector is also the largest private sector employer of Indigenous Australians.

Western Australia's economy has rebounded strongly from the Global Financial Crisis (GFC). Despite economic growth slowing to 0.7 per cent in 2008-09, it grew by 3.75 per cent in 2009-10 and is forecast to grow by at least 4 per cent over the forward estimates.[1]

The strong performance of the resources sector underpins these results. In 2010-11, the value of Western Australia's minerals and petroleum production reached $101 billion, representing a 39 per cent increase over the prior year. Exports of these products, in 2010-11, accounted for 95 per cent of Western Australia's total merchandise exports, and 41 per cent of Australian merchandise exports. Furthermore, royalty payments to the state government totalled $4.8 billion[2] for the 2010-11 year.

The prospects for future growth are strong, with $1.59 billion[3] invested in minerals exploration in Western Australia in 2010-11, accounting for 54 per cent of total national investment. In addition, $2.4 billion was invested in petroleum exploration, accounting for 73 per cent of the total national investment. This exploration is translating into significant further development, with the value of resource projects either committed or under construction more than $200 billion.[4]

Managing and enabling this growth requires a sensitive and sophisticated fiscal environment.

The minerals sector is already among the highest taxed industries in Australia. A recent tax survey report prepared for the Minerals Council of Australia (MCA) by Deloitte Access Economics found

[1] Government of Western Australia, 2010-11 Government Mid-year Financial Projections Statement, December 2010
[2] Department of Mines and Petroleum, Quick Resource Facts, as at 29 September 2011.
[3] Department of Mines and Petroleum, Quick Resource Facts, as at 29 September 2011.
[4] Department of Mines and Petroleum, Investment in major projects (as at 1 March 2011).

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The minerals sector is already among the highest taxed industries in Australia. A recent tax survey report prepared for the Minerals Council of Australia (MCA) by Deloitte Access Economics found that the total tax take (royalties and company tax) from larger miners has been relatively stable in recent years, averaging 41.5% between 2007-08 and 2009-10. The minerals industry revenue contribution from these two sources has exceeded $80 billion over the last decade and is expected to reach a record $23.4 billion alone in 2010-11.

2. CME TAXATION REFORM PRIORITIES

CME has consistently supported genuine reform of the Australian taxation system and continues to do so to provide for an efficient and effective tax regime. Tax reform is an essential function of Government and we support the current government initiative in commissioning the AFTS report and holding the Tax Forum to develop equitable and efficient tax measures, protect Australia's international competitiveness and promote economic stability.

Principles of tax reform

CME supports the principles for tax reform published by the Business Coalition for Tax Reform, listed at the BCTR website (http://www.bctr.org/bctr-10-principles). The principles relevant in the context of this submission are:

1. The tax system should be simple, transparent and should minimise uncertainty.
2. The design, administration and operation of the tax system should be undertaken with full and effective consultation with relevant stakeholders including the business community.
3. The tax system should fairly balance the need to protect the taxation revenue base with the principles of a good tax system, i.e. efficiency, fairness (horizontal and vertical equity), simplicity, clarity, certainty and low compliance costs.
4. The tax system should enhance competitiveness by providing a climate conducive to improved investment in Australia and from Australia for Australian-based entities and individuals.
5. Indirect taxation at the state and territory level should be more efficient and competitive.
6. The pattern of Federal/State financial relations should be transparent, efficient and sustainable.

9. The tax system should avoid the double taxation of business income and provide relief for all business expenses.
10. The tax system should not impede organisational restructuring.

Enhancing international competitiveness of investment in Australia

The vast scale of projects in mining and energy industries requires extensive infrastructure and long term investment capital. In a global economy, the capital essential to fund these projects is highly mobile. Even in the resources sector where Australia is well placed to drive economic growth, there are several competing jurisdictions for investment.

Australia' existing and recently-announced investments in mining and oil and gas are the culmination of significant project development processes. These investments cannot be taken as an indicator of future investments. The global resources sector is assessing other locations in other continents, which have significant potential, and Australia's tax system must remain internationally competitive in order to attract investment, economic development and employment growth into the future.

In this global context, Australia needs tax policies that do not provide a disincentive to investment in an industry and so restrict the ability of Australian operations from competing internationally. This is particularly relevant for the minerals and energy industries already impacted by a suite of new tax and compliance measures at a Federal level, at a time when state taxes have not been reduced to date.

Focus on efficiency and avoiding duplication of taxes

Given the introduction of new major taxes, namely the proposed Minerals Resource Rent Tax and the Clean Energy Future package, Australian companies, now face significant tax and compliance costs that our trading competitors overseas do not. Uncertainty around implementation and administration of the new measures increases the risk premium international investors' demand from Australian investment.

Governance of the tax reform process requires transparent consultation

Achieving an Australian taxation system that drives increased productivity and economic growth across all industries requires an open, consultative and systematic process. Meaningful consultation on all major tax proposals should be undertaken throughout the development of significant reforms.

Recent experience suggests an Australian tendency to announce significant tax policies with predetermined start dates set out in Government media releases before any robust consultation or testing of the viability of particular reforms. The consultation processes have arisen after the taxes have been announced, in some cases with little influence on the overall design. In other cases this approach has led to announcement of measures (in some cases retrospective) later requiring extensive industry input and revision to produce workable rules.

Where significant tax reform is proposed we recommend a systematic and consistent approach to take the proposal from idea to implementation in three distinct steps:

- ***Green paper*** – This first step in the tax reform process should involve public announcement of the high level conceptual tax policy objective for discussion. This may take the form of a Treasury discussion paper or alternatively a referral to the Board of Tax to provide recommendations.
- ***White paper*** – After review of initial feedback a more detailed announcement of the proposal should be available for wider public comment
- ***Exposure draft law*** – After review of stakeholder comments an exposure draft should be prepared and released for further comment

Governance of Australia's taxation administration processes

An important reform principle is to manage the reform changes in a way that allows for certainty of outcomes and minimises disturbances to Australia's investment and business environment – "efficiency, fairness (horizontal and vertical equity), simplicity, clarity, certainty and low compliance costs" as the BCTR principles express it.

This requires effective and timely consideration of issues surrounding the administration of tax legislation in Australia. There is room to improve Australia's tax administration and the perceptions of uncertainty and changes of opinion highlighted by the Inspector-General of Taxation (IGT) [5].

[5] Inspector-General of Tax, 'Review into the Implications of any Delayed or Changed ATO Advice on Significant Issues' – publicly released 17 March 2010.

3. TAXATION – KEY CONSIDERATIONS

CME have provided below commentary on a number of key taxes for consideration. While there are a wider range of issues, CME has limited its commentary to those taxes that are of specific relevance to the resources industry at this time.

Carbon Pricing Mechanism

CME, individually and in conjunction with the Minerals Council of Australia (MCA), has been actively involved in the consultation period for Federal Government's carbon pricing mechanism. The policy consultation process has unfortunately been characterised by short timeframes, which is inadequate given the complexity of the proposed policy and its potential ramifications on the Australian economy.

A number of submissions have been lodged with the Federal Government with respect to the proposed carbon pricing mechanism including, but not limited to, the following:

- CME submission on the exposure draft legislation (lodged 22 August 2011)
- MCA joint industry body submission on the exposure draft legislation (lodged 23 August 2011)
- CME submission on the Clean Energy Future legislative package (lodged 28 September 2011 with the Senate Select Committee on 28 September 2011

CME acknowledges that sustained global action is required to reduce the scale of human induced climate change. The design of any new carbon pricing scheme must be principles-based, and meet key criteria including that it is economically efficient, environmentally effective and does not compromise international competitiveness and energy security.

CME has developed three key climate change policy principles that will enable a measured transition to a low emissions global economy:

a global agreement for greenhouse gas emission abatement that includes emissions reduction commitments from all major emitting nations;

market-based policy measures that promote the abatement of greenhouse gas emissions at the lowest cost, while minimising adverse social and economic impacts, including on the competitiveness of the internationally traded sector; and

substantial investment in a broad range of low emissions technologies and adaptation measures.

In the absence of a global agreement in the near term, the imperative for all nations is to sustainably reduce the production and consumption of greenhouse gas emissions without compromising international competitiveness, energy security and economic growth, improved living standards and poverty alleviation.

Unfortunately the Federal Governments proposed Clean Energy Future legislative package fails to meet these objectives and hence CME strongly opposes its implementation. Specifically, the key issues are, but not limited to:

- Failure to ensure that trade exposed industries are not disadvantaged when compared to their international competitors. This is particularly relevant give the Australian carbon pricing mechanism will be the world's biggest carbon tax;
- Arbitrary approach of sector coverage which places a higher burden on covered sectors;
- Treatment of transport fuels; and
- Lack of streamlining of non-complimentary State and Federal measures.

CME is keen to continue to work with the Federal Government to ensure the proposed carbon pricing mechanism meets its core principles, including provision of business certainty and ensuring the ongoing international competitiveness of Australia's resources industry.

Minerals Resource Rent Tax

CME has always supported genuine reform of the Australian taxation system in order to provide for an efficient and effective tax regime. Thus it has argued, in relation to any consideration of a federal tax on resources, that it should:

- be prospective, that is apply only to new investment;
- protect Australia's international competitiveness;
- be differentiated by resource commodities;
- be levied on primary resource value; and
- be equitable and efficient.

The original RSPT failed to meet the above resource rent principles and while the MRRT has addressed this to a limited extent, there are still significant issue and hence CME continues to oppose the introduction of the MRRT. These issues include, but are not limited, to the following:

- it is not genuine tax reform, rather, another layer of tax.
- the impact of the tax on the international competitiveness of our iron ore and coal mining industries is still unknown to a great extent.
- heavy compliance and associated administrative burden on affected companies;
- restrictive deduction and loss ordering rules;
- operation of the simplified MRRT obligations are too punitive and would discourage most taxpayers in adopting the option; and

Greater detail of the CME's concerns with the MRRT can be found in our relevant submissions to the Federal Government, detailed below, which are available upon request.

In relation to state royalties, CME has always maintained a strong preference for retention of the current state regime, administered by the state government and with revenues flowing to the state. The state has prime responsibility for resource project approvals and the provision of non-privately owned infrastructure. As such, it is imperative the state government maintains and receives a dividend for WA resources.

CME has actively engaged with Government through the following the announcement of the Resources Super Profits Tax (RSPT) on 2 May 2011 and on the Minerals Resource Rent Tax (MRRT) from 2 July 2010.

With respect to the MRRT, CME lodged a number of submissions with the Federal Government including:

- MRRT policy submission to the Policy Transition Group (lodged 28 October 2010)
- Submission to the Resource Tax Implementation Group on the Policy Transition Group (PTG) report (lodged 21 April 2011)
- Submission on the preliminary exposure draft legislation (lodged 13 July 2011)

In addition, CME was co-signatory on a number of MCA joint industry body submissions. Both CME and the MCA are currently reviewing the second tranche of exposure draft legislation and will make submissions to the Federal Government prior to the 5 October deadline.

CME will continue to work with the Federal Government and key stakeholders to ensure the impact of the tax on the Australian resources sector is minimised.

GST Distribution

CME is supportive of a more equitable distribution of GST to recognise, reward, and support State based productivity. As outlined earlier in this submission, in 2010-11, Western Australian minerals and energy exports accounted for 46% of all Australian merchandise exports and this trend is forecast to continue.

Key to supporting this growth is timely and strategic investment in infrastructure and services, including roads, ports, energy, water, and town development. The policy of horizontal fiscal equalisation as it is currently practised does not recognise or support the needs and obligations of the Western Australian State Government to deliver key infrastructure and services and avoid capacity constraints. CME advocates for more considered alignment of Federal tax distribution and WA Government spending responsibilities.

CME is currently considering actively engaging in the GST Distribution Review currently underway, led by the Honourable Nick Greiner.

WA Stamp Duty (Land Rich Tax)

At a state level, CME continues to oppose the application of stamp duty on the takeover of listed land rich corporations as introduced in the Stamp Duty Act 1921 (WA). These provisions impose substantial financial cost on the WA economy, on the WA resources industry and pose an impediment to optimal resource development.

Listed companies are land rich in WA where land (including mining tenement) represents at least 60% of the assets held directly or indirectly by the company. Certain assets are excluded from the calculation, with the effect that a company could be regarded as land rich even where land or mining tenements represents significantly less that 60% of the total asset base of the company. This is of particular concern to resource companies. Further, the land rich test also requires the land/mining tenements in WA to be worth at least $1 million. This threshold was set in 1986 for unlisted companies and has not been changed since.

CME continues to seek from the state government that it repeals the listed land rich provisions. However, CME provides an alternative if the repeal of the provisions cannot be resolved. CME recommends the following amendments to the provisions:

- The minimum value of land directly or indirectly held by a company in WA before the land rich provisions would apply should be increased from $1 million;
- Assets that resource companies hold such as mineral stockpiles, sales contracts and mining intellectual property, like goodwill and information held by companies in other industries, should not be excluded assets when undertaking a land rich calculation; and
- The definition of 'land' should exclude exploration tenements.

CME seeks that due consideration be given to these recommendations.

Exploration Incentives

Exploration is critical to the growth, vitality and diversity of the Australian minerals industry. Both regional communities highly dependent on the industry and the wider Australian economy stand to benefit from increased exploration activity.

Despite a pick-up in expenditure in recent years, real mineral exploration activity (measured by metres drilled) is well down on levels recorded in the 1990s. Most of Australia's minerals production is from deposits found 20 or more years ago.

CME believes that taxation measures should encourage investment in exploration. In particular, introduction of a national flow through shares (FTS) scheme, or equivalent, would provide a much needed boost to resource sector exploration.

An FTS scheme essentially enables the transfer of tax deductions of individual exploration companies to individual investors to offset their own taxable income. This results in a higher after tax value of exploration activity conducted by the companies.

CME strongly believes the implementation of a flow through shares scheme will increase access to capital for mineral exploration, promote exploration activity, and help secure the prospects of the sector into the future.

CME, along with the MCA and other state based industry bodies, sponsored the report "Costs and benefits of Flow Through Shares for Australian junior exploration companies" (May 2009) which shows the positive impact such a scheme could have in both the short and medium terms. The report is available upon request.

In November 2010 CME, again in association with the MCA and other state based industry bodies, advocated these views in a submission lodged with the PTG in October 2010. However, in its December 2010 Minerals and Petroleum Exploration Report, the PTG stated there is currently a no need for financial or tax-based incentive scheme to promote exploration in Australia. While CME acknowledges this finding, we still strongly recommend the implementation of exploration incentives, preferably a flow through shares type of arrangement.

Zone-Based Income Tax Incentives

Western Australia's resources industry is located predominantly in remote and regional areas of the State. This can present challenges to attracting and retaining appropriately skilled labour. CME supports labour initiatives that deliver the dual objectives of meeting resource project labour demands and providing workers with alternative, flexible, and attractive employment options. The two primary strategies are fly-in-fly-out (FIFO) and residential.

The value of the zone rebate has been significantly eroded over time and currently does not provide an incentive to people to make their homes in regional Western Australia. CME believes a review of the income tax zone rebate is required to ensure that it, or a replacement scheme, delivers a real financial incentive to workers to relocate to areas of identified need.

4. CONCLUSION

The Western Australian resources industry is entering another period of significant growth that will drive both the WA economy and to a large extent, the national economy over the coming years. With the prosperity that comes from this growth are a number of significant challenges that need to be managed. Not least of these are the MRRT and carbon pricing mechanism – management of these issues is critical to ensure they do not adversely impact the sustainable growth and international competitiveness of the sector to the detriment of the nation.

CME is keen to work with the Federal and State Governments, the community and other key stakeholders to ensure the challenges and opportunities associated with growth of the resources sector are managed effectively.

Yours sincerely

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