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CONSULTATION ON DRAFT EXPOSURE LEGISLATION: TAX LAWS AMENDMENT (2012 MEASURES NO.3) BILL 2012

The submission is made by the Minerals Council of Australia ("MCA") in relation to the proposed changes in *Tax Laws Amendment (2012 Measures No.3) Bill 2012* (the "Bill"), which was released on 15 May 2012, to reform the living away from home allowance ("LAFHA") provisions in line with the changes announced in the 2012 Federal Budget and the 2011 Mid-Year Economic and Fiscal Outlook.

The Bill also contains so called "consequential amendments" in relation to the taxation of board fringe benefits, which the MCA is of the considered view do not form part of Government policy based on the announcements in the Federal Budget and 2011 Mid-Year Economic and Fiscal Outlook in respect of the living away from home provisions.

It is proposed that from 1 July 2012, paragraphs 36(a) and (b) of the *Fringe Benefits Tax Assessment Act 1986* ("FBTAA") are to be repealed and amended as follows:

- (a) *if the recipient is aged 12 or over at the start of the year of tax—the amount worked out by:*
 - (i) *working out 1/21 of the amount applicable, at the start of the year of tax, under paragraph 25-115(3)(b) of the Income Tax Assessment Act 1997 (ignoring the table) to an individual deducting an amount under section 25-115 of that Act; and*
 - (ii) *rounding down that result to the nearest dollar; or*
- (b) *otherwise —1/2 of the amount worked out under 14 paragraph (a);*

The effect of the changes will be that from 1 July 2012, the taxable value of board meals will be calculated with reference to the new statutory values of ordinary weekly food and drink expenses (typically \$110 per week for an adult) compared with the current \$2 per meal for an adult (which equates to \$42 per week).

The mining industry is a significant employer in the Australian economy and provides a large amount of accommodation and meals to employees in camp style accommodation in remote areas, which are located close to operations. The effect of these changes will be that the fringe benefits tax liability in relation to board fringe benefits will increase by at least 2.5 times for the mining industry, which is a very substantial increase. The changes are effectively another increase of the tax burden of the industry, without any Government policy basis.

Paragraph 2.66 of the Explanatory Memorandum (EM) to the Bill states that the changes to board fringe benefit rates are "consequential amendments" in the FBTA "which reflect changes to the living-away-from-home allowance and benefit rules, including a change to the board fringe benefit rules to ensure the taxable value for board fringe benefits is calculated on an equivalent basis to deductible food expenses in the income tax law".

In the Federal Treasurer's press release of 8 May 2012 there is no mention at all in relation to changes to the board fringe benefit provisions as consequential amendments to the LAFHA provisions to ensure an equivalent basis to deductible food expenses in the income tax law.

In relation to LAFHA's the Treasurer states that the "Government will further reform the **tax concession for living-away-from-home allowances and benefits**, by better targeting it at people who are legitimately maintaining a home away from their actual home for an initial period" and the "measure will **build on the reforms to this tax concession announced in the 2011-12 Mid-Year Economic and Fiscal Outlook** by:

- Limiting access to the tax concession to employees who are maintaining a home for their own use in Australia, that they are living away from for work; and
- Imposing a 12 month time limit on how long an employee can receive the tax concession at a particular work location." [Emphasis added]

The Treasurer also mentions that the LAFHA reforms further progress recommendation 9(c) of the Australia's Future Tax System review. Recommendation 9(c) of the Australia's Future Tax System review reports states as follows:

(c) All fringe benefit tax (FBT) exemptions should be reviewed to determine their continuing appropriateness. To improve simplicity, consideration should also be given to excluding fringe benefits from tax where the costs of compliance outweigh equity and tax integrity considerations. The broad definition of fringe benefits in the FBT law could be reviewed to exclude essential workplace items such as chairs, stationery and toilets.

There is clearly no mention in the recommendation regarding changes to the board fringe benefit provisions.

There is no statutory link between the rates currently prescribed in paragraphs 36(a) and (b) of the FBTA of \$2 per board fringe benefit (meal) for a recipient over the age of 12 years and \$1 for a recipient under 12 years and the amounts currently prescribed in the definition of "statutory food amount" in subsection 136(1) of the FBTA, which are used in subsection 31(a)(ii) of the FBTA to calculate the "exempt food component", which is defined in subsection 136(1). Accordingly, the repeal of the definitions of statutory food amount and exempt food component in the Bill has no consequential impact on the rates currently prescribed in paragraphs 36(a) and (b).

For the reasons set out above, the MCA is of the considered view that the changes to the board fringe benefit provisions are not Government policy and therefore are **not** required as part of consequential amendments to the LAFHA provisions. Consequently, changes to paragraphs 36(a) and (b) of the Bill should be removed.

If you would like the MCA to provide further explanation of any issues raised above, please contact me in the first instance (john.kunkel@minerals.org.au or 02 6233 0649).

Yours sincerely,



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