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RESPONSE TO EXPOSURE DRAFT TAX LAWS AMENDMENT (2013 MEASURES NO. 1) BILL 2013: GENERAL ANTI-AVOIDANCE RULES

The Minerals Council of Australia (MCA) welcomes the opportunity to comment on the exposure draft of the *Tax Laws Amendment (2013 Measures No. 1) Bill 2013: General Anti-Avoidance Rules*.

The MCA is the peak industry organisation representing Australia's exploration, mining and minerals processing industry (nationally and internationally). MCA member companies are among Australia's largest taxpayers.

The MCA wishes to state at the outset that it fully supports measures to protect the integrity of Australia's tax system. However the Bill, as currently drafted, introduces a number of new concepts and is uncertain in its operation. There is a significant concern within the business community that it could be administered in a way that would create unexpected additional tax liabilities in relation to transactions containing no element of contrivance or artificiality. Until clear judicial guidance is provided on the meaning of the provisions, which could take a number of years, the lack of clarity would constrain commercial activity and make it extremely difficult to make normal business decisions. Certainty of outcome is critical when making commercial decisions and the proposed rules would cause significant uncertainty for taxpayers across a range of everyday transactions. The MCA considers that the Bill, as drafted, clearly exceeds the Government's policy intent and infringes on its objective to administer an efficient and effective tax system.

In making this submission, the MCA endorses that made by the Corporate Tax Association (CTA) and would underline the following key comments with the objective of seeking to ensure the most practical enactment of the Government's policy intent while also aiding taxpayer certainty:

- The excessive number of amendments to Part IVA potentially undermines the relative certainty of case law precedent on the operation of Part IVA. The MCA submits that changes to Part IVA should be kept to a minimum and solely address the two targeted areas.
- The MCA recommends that the Objects clause retains the statement from the 1981 Explanatory Memorandum that Part IVA is intended to target "tax avoidance arrangements that are blatant, artificial or contrived".
- The MCA shares the concerns that the assumption that tax was disregarded by the relevant persons may grant the Commissioner excessive power to make determinations that impose maximum tax, and that the assumption that the relevant persons would have sought to achieve the same non-tax effects as the scheme should be expressed in more general language.
- The law should clarify that there may be more than a single alternative postulate, and the explanatory material should refrain from arguing for a single holistic enquiry into the alternative postulate.

The MCA appreciates the opportunity to comment on the development of this legislation. Should you require 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,

A handwritten signature in black ink, appearing to read 'JK', with a large, sweeping flourish extending to the left.

John Kunkel
Deputy Chief Executive