

New Hope Coal Australia

A Division of NEW HOPE CORPORATION LIMITED
ABN 38 010 653 844

19 April 2010



The General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Second Exposure Draft: The New Research and Development Tax Credit

New Hope Corporation Limited (New Hope) is pleased to have the opportunity to provide comment on the Second Exposure Draft for the new R&D Tax Credit, released 31 March 2010 ('the second exposure draft'). We support the Government's decision to return for more consultation on this crucial program.

An overview of New Hope's business and R&D activities have been provided in the previous submission and are attached at Appendix 1 for your quick reference.

We understand that there is a desire to restrict large claims of predominantly directly related trials in the course of normal production activities. We also see an acknowledgement that genuine R&D is conducted "in a range of settings, from a separate laboratory to an otherwise normal production run"¹.

Trials (undertaken in a production context) will now need to be for the "dominant purpose", either as:

- Core: experimental activities "conducted for the purpose of generating new knowledge..." – "the purpose" meaning "dominant purpose"²; or
- Supporting: where the activity is the "production of goods or services" then it is a supporting activity only if it is undertaken for the "dominant purpose" of supporting the core R&D activities.

In this context, it is our view that the **dominant test is too broad and too subjective**. We are concerned with how this will be practically administered. As "purpose" goes to "intent", and there is an acknowledgement these activities will be undertaken with the dual, complementary purposes of commercial outcome and R&D³ – how are claimants to evidence that R&D was the stronger of these purposes?

Our preference is that a midpoint be found between "a purpose" and "dominant purpose", which achieves the Government's objectives of not subsidising ordinary production activities, but which incentivises genuine R&D trials in a commercial context. We ask that the Government considers "**influential purpose**" as an alternative to "dominant purpose".

¹ EM paragraph 2.11

² As determined by case law and acknowledged in the EM paragraph 2.20

³ EM paragraph 2.21

In the very least, for a workable solution, further guidance is required to enable claimants to have confidence in identifying and claiming genuine R&D trials (where the dominant purpose is R&D) and documenting those trials (such that genuine R&D trials are not unfairly attacked under review).

Conclusion

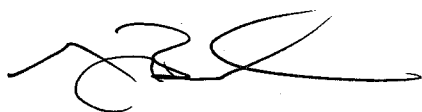
New Hope congratulates the Government on the changes contained in the second exposure draft and believes we are close to a workable solution.

We believe that **dominant test is too broad and too subjective**, however with a midway point such as **“influential purpose”**, genuine R&D trials can still be claimed, while the Government achieves its objective of restricting large claims of predominantly directly related trials in the course of normal production activities.

Thank you for the opportunity to provide comment on the second exposure draft.

If you wish to discuss any aspect of this submission, please contact me on (07) 3418 0512.

Yours faithfully

A handwritten signature in black ink, appearing to be 'MB', with a long horizontal stroke extending to the right.

Matthew Busch
Financial Controller / Company Secretary

Appendix 1: New Hope's Business and R&D

New Hope's Business

We are an independent energy company, which specialises in thin-seam mining. The company has open cut mines at Acland on the Darling Downs, and at Rosewood near Ipswich. New Hope focuses on niche marketing of its thermal coal and exports around 75 per cent of its coal production to Asia Pacific markets including China, Japan, Korea and Chile with the remainder being consumed by customers in south-east Queensland. The company also holds various exploration tenements in central Queensland and on the Darling Downs in southern Queensland. With our head office at Brookwater, near Ipswich, New Hope manages each step in the coal production chain, from exploration and mining the mineral, through to delivering it to customers. The company and its subsidiaries interests include coal mining, port operations and resource based activities in Queensland. The company is a major employer in the regional centres of Ipswich and Toowoomba employing some 515 employees across the two regions, and many contractors associated with our mining and exploration activities.

New Hope and R&D

New Hope has a long history of investing in R&D and has previously received assistance from the Government in the form of the R&D Tax Concession to support this investment. The company believes that innovation and R&D are core components to its business operations and helps to stand it apart from its competitors. For instance, through a comprehensive program of eligible R&D, the Group has successfully developed a complex thin seam coal mine at Acland, near Toowoomba, Queensland, which employs 164 people and contributes to the local community. Without the company's investment in R&D, this precious resource would very likely never have been recovered as most coal mining producers would consider the tenement too difficult to mine.

New Hope also has plans to diversify into new technology fields and is pursuing a Coal to Liquids initiative. The project is targeting excellent environmental credentials and plans to be a great example of clean coal technology. The design targets CO₂ equivalent emissions of less than 10% of that generated by the equivalent amount of coal burnt in a conventional power station, or less than 20% of the CO₂ generated by the equivalent energy of natural gas consumed in a power station. In oil equivalent terms this equates to less than 100kg of CO₂ per barrel of oil (159 litres). This outcome, if achieved, is significantly improved upon a commonly held perception that Coal to Liquid processes can create up to one tonne of CO₂ per barrel of oil equivalent. The anticipated benefit of the R&D tax concession has been a key consideration of the company to undertake this revolutionary initiative, and similarly the new R&D tax incentive will be a key consideration going forward. New Hope accounts for R&D incentives in its R&D planning process and reductions in R&D incentives may jeopardize projects like this, or at the very least, restrict the speed at which they can proceed.