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By email

Dear Director

Exposure Draft legislation on capital allowances for mining, quarrying or prospecting rights and clarifying the meaning of exploration for petroleum - KPMG submission

We write in response to the Exposure Draft *Treasury Laws Amendment (Measures for Consultation) Bill 2023: Capital allowances for mining, quarrying or prospecting rights and clarifying the meaning of exploration for petroleum* proposed amendments to the Income Tax Assessment Act 1997 (ITAA 1997) specifically concerning the tax treatment of mining, quarrying or prospecting rights and information.

Firstly, we recommend that Treasury amend paragraph 1.26 of the Explanatory Material (EM). This paragraph discusses apportionment under section 40-217 of the ITAA 1997. It suggests that a reasonable proportion could be determined based on the respective areas of the new rights compared to the area of the old rights. We submit that a more equitable approach would be to apportion based on the market values of the respective areas. For instance, if an original exploration permit over 100km² is split into a new exploration right over 90km² and a new mining right over 10km², it is likely that most of the value of the original exploration tenement will relate to the area over which the new mining right relates. This approach would align with the example in 40-205. Following the approach in paragraph 1.26 would allow taxpayers to retain the new exploration area for a short period, cease exploring the remaining area and obtain a balancing adjustment immediate deduction for the adjustable value of it.

We also note that the last sentence of paragraph 1.26, "The adjustable value of the other right is then zero" appears inconsistent with the apportionment being based on area.

Secondly, we request that Treasury confirm that the intention of the new rules is to not change how Division 40 interacts with section 40-77 of the *Income Tax (Transitional Provisions) Act 1997*. Specifically, under the existing rules, a new right that relates to an area of a pre-2001 right will be within Division 40 where there is a significant difference in the area over which the new right is granted. Proposed section 40-122(a)



will not apply to change the operation of section 40-77 as Division 40 does not apply to pre 2001 MQPRs.

More broadly, we recommend that Treasury consider whether sections 40-77 and 702-1 should continue to be relevant for events occurring from the time these proposed rules receive Royal Assent. We submit that the continued operation of section 702-1 complicates transactions in respect of long-life mines without impacting tax revenues. We appreciate your consideration of these points and look forward to further discussion on these matters.

Yours sincerely

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Tax Policy Lead

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