Minerals Council of Australia

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Director
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Corporate and International Tax Division
Treasury
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Dear Director

The Minerals Council of Australia (MCA) representing Australia's minerals exploration, mining and processing industry appreciates the opportunity to provide feedback to the consultation on *Future Made in Australia: Critical minerals production tax incentive*. Australia is the world's largest exporter of minerals and metals, making it an essential part of global supply chains. The country ranks as the top exporter of iron ore, metallurgical coal, lithium and bauxite. Furthermore, Australia is the second-largest producer of gold and a leading producer of critical minerals including lithium, rare earth elements and cobalt. The minerals industry produces these minerals and metals through world leading sustainability standards, including leading-practice environmental management and community engagement.

Consultation on Future Made in Australia: Critical Minerals Production Tax Incentive (CMPTI)

We note that the Consultation Paper (CP) raises 30 questions for comment. The majority of these questions are seeking detailed responses addressing commercial and processing knowledge that is often specific to individual commodities and outputs. In our view, consultation would be best progressed with involvement of companies that have projects/facilities in consideration, or under development. Our response therefore, focuses on policy aspects associated with the incentive and related administrative and reporting issues raised by the CP. We note that the CP and government announcements to date are very high level. The MCA recommends that once Treasury has considered the responses to the CP, it undertakes a second round of consultation in relation to more detailed proposals as to how the CMPTI will operate and be administered. Appropriate consultation with industry will lead to better policy.

Purpose of the CMPTI

It is our understanding that the purpose of the CMPTI is to attract investment in downstream processing of the critical minerals in Australia. As stated in the CP, it is about value adding to our resources and investing in communities and services that will drive our national success.

Production tax incentives are not a substitute for addressing policy impediments to investment, such as inefficient regulatory and policy settings. Australia faces high costs of labor, construction and regulation, and long approval timelines relative to mineral processing in many other countries. Production tax incentives should be used to address market failures and drive new capital investment that will lift productivity and wages along with achieving policy outcomes in the national interest.

The first step is to ensure Australia attracts investment in discovering, building and operating mines and processing plants for critical minerals. In that regard, it is vital that Australia has internationally competitive policy settings to attract the billions of dollars in investment that these long-life projects require to produce and process critical minerals, create jobs in regional and remote areas of Australia, pay huge amounts of royalties and company taxes, and generate wealth for the country. If we fail to develop the mines to produce the critical minerals, we will not attract investment in downstream processing. This is because it would be economically and commercially cheaper to process materials near their production or use (for example in Asia, USA, Canada, Africa or Europe) rather than transport them to Australia for downstream processing and manufacture and then transport the processed product back to the end user customer.

Furthermore, downstream processing and value add activity starts immediately after the mineral is mined. These value-add processing activities vary by mineral but generally involve concentrating, refining and smelting activity to create a pure mineral or metal. Further processing is often undertaken to create alloys or chemical components that then form the basic inputs to manufactured goods. In our view, the CMPTI should be targeted at incentivising those downstream activities in Australia. Yet, the CP implies that the CMPTI is only available for downstream processing of critical minerals that produce specified, identifiable outputs and not for downstream processing of critical minerals that produces other outputs. This will reduce the effectiveness of the CMPTI and also make eligibility more difficult and more complex. Also, intermediate processing steps are often needed to develop the raw materials required for further processing to produce the chemical output envisaged by the CP.

If the CMPTI is targeted at facilities that take raw materials that have already been refined or made into a concentrate, then the real risk is that those intermediate downstream processing activities will not be built in Australia or that the downstream processing facilities become economically stranded. Commercial risk mitigation naturally leads to decisions to build late-stage battery chemicals and other manufactured inputs in close proximity to the large-scale demand.

Eligibility Requirements

In order for the CMPTI to influence investment decisions (FID as per the CP) it is important that the investor be confident as to whether the project/facility will produce outputs that are eligible. In practice, the FID is made by the Board of Directors and eligibility for the CMPTI will be relevant to that decision. The CP states that some processes and outputs within an otherwise eligible facility will be ineligible because, for instance, they do not meet specified purity requirements. This project eligibility risk will need to be addressed if the CMPTI is going to be a positive factor in the FID. This means that there needs to be a process for DISR and Geoscience Australia to provide the investor with certainty in relation to eligibility before the FID is made.

In addition, the requirement that the claimant be a corporation could restrict project investment. It is our understanding that superannuation funds, for example, prefer to invest into projects that are made through trust structures rather than corporations, such that the superannuation fund share of the income is distributed by the trust.

Given the objective of the CMPTI is to support activities targeted at supply chains and the level of 'value add' necessary for Australia's economic resilience and national security, the MCA supports Treasury's intention to appropriately assess the eligibility of new minerals added to the existing list of 31 critical minerals throughout the lifetime of the incentive.

Eligible Expenditure

The CP refers to direct costs of processing and refining the material. It excludes indirect costs or costs incurred regardless of the level of processing. It also raises the concept of expenditure being at arms-length. This area of determining costs that have a required nexus to the project is fertile ground for the ATO to administer and, based on experience, challenge and reduce the impact of the incentive and its overall purpose. Industry experience with the R&D tax concession and the role the ATO has taken in challenging eligibility of costs and demanding additional compliance measures has reduced the attractiveness of the tax concession and therefore the attractiveness of Australia as a destination for R&D activity. In addition, for those CMPTI claimants that are vertically integrated or have facilities that produce some impure and ineligible outputs, the nexus issue and the treatment of internal related party transactions will be very relevant. There will need to be clearly established rules to determine what expenditure is eligible, as well as a suitable process for dispute resolution that is not reliant upon the ATO objection and appeal processes but rather involves DISR and Geoscience Australia.

Final Investment Decision (FID) by 30 June 2030

FID is a term more commonly used in the oil and gas industry than mining. In the mining industry, projects are often approved for investment in stages with consideration of upscaling or expanding if the opportunity and project economics support it. The policy rationale to require FID by 30 June 2030 is not apparent, particularly for investment decisions made after that date to expand existing projects or to extend their operating life. Why is the date needed - if the overarching rules mean that the CMPTI ends in 2040? Also, how is the 10-year cap determined in relation to a facility or project that is expanded by additional investment partway through the 10 years?

Transparency and Disclosure Reporting

We note that transparency and disclosure reporting requirements will be established. We recommend that the existing reporting processes and those to be introduced via the mandatory enhanced tax reporting be used as the process for new reporting requirements. Furthermore, given that the ATO will be a co-administrator of the CMPTI, it is unnecessary to impose a requirement for recipients of the CMPTI to demonstrate compliance with their tax obligations.

Final Comments

Australia's success in adding value to its critical minerals before export through downstream processing will largely depend on the international competitiveness of these activities. Announcements of closures and curtailments in alumina, nickel and lithium operations are symptomatic of the growing international competitive pressures and deteriorating domestic business conditions making investment in Australian projects less attractive. Australian nickel production provides a good example.

Investment in critical minerals processing projects is subject to similar characteristics to that of mining: capital intensive, large sunk costs, uncertain pay-offs owing to price dynamics of commodity markets, and the ability of proponents to delay decisions until there is better information about future conditions. These characteristics combined with Australia's high construction and operating costs compared to many other countries, highlight the importance of policy certainty and efficient regulations and policy settings in avoiding additional risks and costs that may adversely affect project investment decisions.

Capital investment will flow to minerals processing projects with the best risk and returns. If these projects do not exist in Australia, capital will flow to countries where they do.

We thank you again for the opportunity to comment and look forward to engaging constructively with the Government on informing these critical policies.

Yours sincerely

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CHIEF EXECUTIVE OFFICER