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28 August 2006

Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Inquiry into the provisions of the Tax laws Amendment (2006 Measures No. 4) Bill 2006

On 22 June 2006, the *Tax Laws Amendment (2006 Measures No. 4) Bill 2006* was introduced into Parliament. Schedule 4 of this Bill (proposed Division 855) will substantially alter the capital gains tax treatment of non-residents.

The Minerals Council of Australia (MCA), the Australian Petroleum Production and Exploration Association Ltd (APPEA), and the Corporate Tax Association (CTA) (the "joint submission parties") acknowledge and accept the broad policy objectives underlying proposed Division 855 - that is, to tax non-residents on capital gains that relate to underlying Australian real property, including mining and petroleum rights. Doing so would bring Australia law more closely into alignment with international practice - which has a number of advantages, including, keeping Australia internationally competitive as a preferred investment destination.

However, the joint submission parties have significant concerns regarding some specific compliance, transitional and equity aspects of the proposed measures and we have collectively sought a number of amendments.

As such, the joint submission parties lodged a comprehensive submission with The Honourable Peter Dutton MP, Minister for Revenue and Assistant Treasurer, on 13 July 2006. A summary of the key points of our submission is at **Attachment 1**. Government is yet to formally respond to this submission.

Representatives of the joint submission parties would be available to meet with the Committee to discuss any element of the aforementioned submission, or any other issue.

If you have any queries in relation to this issue please do not hesitate to contact us. Mr David Rynne, Assistant Director Economics Policy, MCA, (02) 6233 0649 (david.rynn@minerals.org.au) should be your contact in the first instance.

Yours sincerely



BELINDA ROBINSON
Chief Executive

Australian Petroleum Production
& Exploration Production



FRANK DRENTH
Executive Director

Corporate Tax Association

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are needed to see this picture.

MITCHELL H. HOOKE
Chief Executive

Minerals Council of Australia

Proposed Division 855 – Joint Submission

**(The Minerals Council of Australia, the Australian Petroleum Production and
Exploration Association Ltd, and the Corporate Tax Association)**

13 July 2006

Summary of submission points

Issue	Proposal	Key outcomes
1 A transitional mechanism is required for pre-commencement unrealised gains/losses (only applicable to shareholdings in non-resident entities).	Exclude unrealised gains/losses as at 1 July 2006 in respect of interests in non-resident entities; ie interests in non-resident entities should obtain a 1 July 2006 market value cost base.	<ul style="list-style-type: none"> • Equitable treatment consistent with the transition of other assets/taxpayers into CGT. • Avoids substantial (and in some cases insurmountable) compliance difficulties regarding prior cost base calculations.
2 More precisely focusing the taxable CGT gain/loss on underlying Australian real property.	Only a proportion of the gain on the sale of interests in a resident or non-resident entity that is "land-rich" should be subject to CGT, equal to the Australian land-rich proportion.	<ul style="list-style-type: none"> • Assists in addressing significant industry concerns that gains in respect of underlying non-Australian assets will inequitably also be taxed in Australia.
3 Addressing impediments to upstream corporate restructures.	3.1 Dealing with CGT event J1 anomalies Necessary amendments should be made to CGT event J1 such that it: <ul style="list-style-type: none"> (i) is subject to a 3 year post-roll-over limit; (ii) exempts minority interest divestments; and (iii) addresses sub-group exemption anomalies that currently require a 100% disposal of a higher level entity. 	<ul style="list-style-type: none"> • Addresses clearly anomalous tax exposures. • Reduces ongoing compliance costs.
	3.2 Dealing with other CGT restructuring impediments Introduce measures to address CGT gains that could otherwise arise in an off-shore restructure of a wholly-owned group that cannot be protected by roll-overs.	<ul style="list-style-type: none"> • Addresses anomalous tax exposures. • Will eliminate Australian tax impediments to streamlining foreign structures of wholly-owned groups.
4 Market valuation requirements regarding all underlying assets in many cases will introduce significant ongoing complexity and substantially add to ongoing compliance	Taxpayers should be able to choose to utilise book values (as per recognised accounting standards) in all "indirect Australian real property interest" calculations, rather than being required to undertake market	<ul style="list-style-type: none"> • Substantially streamlines calculations and would reduce compliance costs. • Consistent with other equivalent tax provisions.

Issue	Proposal	Key outcomes
costs.	valuations of underlying assets.	
5 Avoiding the imposition of double taxation.	A credit mechanism should be introduced to avoid potential double taxation exposures where an Australian tax impost resulting from proposed Division 855 is not creditable against the equivalent gain taxed in a foreign jurisdiction.	<ul style="list-style-type: none"> • Addresses anomalous potential double tax exposures. • Provides immediate certainty while the position of each of Australia's tax treaty partners is confirmed.
6 Providing grouping relief for losses.	Allowing grouping access to CGT losses and tax losses of wholly-owned companies.	<ul style="list-style-type: none"> • Equitably allows taxation of only net CGT gains (not gross CGT gains).