Minerals Council of Australia

24 August 2007

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 (2007 Measures No. 5) Bill 2007

The Minerals Council of Australia's primary interests with the Tax Laws Amendment (2007 Measures No. 5) Bill 2007 are:

- *Schedule 1 – Tax preferred entities (asset financing)*
- *Schedule 6 – Removal of the same business test cap*
- *Schedule 11 – Research and development (Part 1 – Amendment of the Income Tax Assessment Act 1936).*

Schedule 1 – Tax preferred entities (asset financing)

These provisions will amend the *Income Tax Law* to modify the taxation treatment of leasing and similar arrangements between taxpayers and tax preferred end users for the financing and provision of infrastructure and other assets.

The Australian minerals industry supplies commodity to tax exempt state owned corporations (mainly coal for the production of electricity). These provisions should not however apply in this context. This is because these transactions, unlike the asset financing arrangements this legislation attempts to address, are conducted at 'arms length' (i.e market driven with commercial terms).

Consequently, these provisions should ensure that the minerals industry is placed in the same position as that currently enjoyed under the existing taxation provisions – which is to maintain it's entitlement to legitimate capital allowance deductions for commercial arrangements.

Whilst an explicit 'mining' carve does not exist in the provisions to maintain this position, two mining related examples (1.3 and 1.4) have been included in the Explanatory Memorandum to demonstrate that typical commercial arrangements undertaken by minerals companies should not be impacted by these provisions. The Council supports Schedule 1 of this bill on the proviso that these examples remain in their current form.

Schedule 6 – Removal of the same business test cap

These provisions will amend the company loss recoupment rules in the *Income Tax Law* to remove the $100 million total income cap on the same business test (SBT).

The Australian minerals industry is currently experiencing very strong growth as a result of strong global demand and high prices. As such, many billions of brown and greenfields investment is occurring or is due to occur (estimations are currently in excess of AUD$150 billion), along with significant restructuring in business models and ownership (by way of divestments, mergers and acquisitions etc).

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Investment in infrastructure projects traditionally have long 'lead times' before the generation of income, and incur substantial capital expenditure in the early years of a project. The removal of the $100 million SBT cap will ensure that Australian companies with start-up or major losses resulting from expenditure on major infrastructure, energy and resources projects, will be entitled to recoup capital expenditure deduction losses when they have become operational and generating income.

Currently, many companies that undertake these infrastructure projects are not widely held. As such, they are unable to access the concessional continuity of ownership test (COT) provisions – and must rely on the SBT. Because these companies' incomes often exceed $100m, they have been unable to access the SBT provisions.

Without this amendment, companies which are not widely held and unable to access the concessional COT test provisions, which incur losses and have a subsequent change in ownership (and the companies total income exceeds $100m), will be unable to access prior year tax losses even though the company is conducting – materially, the same business.

This arbitrary cap was denying legitimate capital allowance business deductions – which ultimately were factored into rate of return assessments, and potentially, discouraging expansion. This at a time when there is a significant need for investment in infrastructure projects in Australia.

The Council strongly supports the SBT provisions as drafted.

Schedule 11 – Research and development (Part 1 – Amendment of the Income Tax Assessment Act 1936)

These provisions will amend the *Income Tax Law* to extend the premium 175 per cent research and development (R&D) tax concession to companies belonging to a multinational enterprise group for additional R&D expenditure on behalf of a grouped foreign company above a rolling three-year average of expenditure.

The Australian mining industry conducts R&D activity both here and abroad and welcomes this provision.

If you have any queries in relation, please do not hesitate to contact David Rynne, Director – Taxation and Industry Economics, MCA, (02) 6233 0649 (david.rynne@minerals.org.au).

Yours sincerely

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