9 June 2009

Our Ref.: LMPL-LTR-005

John Hawkins
Secretary Senate Economics Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Hawkins

E-mail: geoffrey.dawson@aph.gov.au

2009 FEDERAL BUDGET - ABOLITION OF SECTION 23AG
INCOME TAX EXEMPTION FOR AUSTRALIANS WORKING OVERSEAS
TAX LAWS AMENDMENT (2009 BUDGET MEASURES NO. 1) BILL 2009

We were planning to attend the Senate Committee Hearing which was originally scheduled for Thursday 11 June. Unfortunately, we have just learnt that this meeting is being held on 10 June and we will be unable to present our submission in person.

Please find below a summary of the concerns we have in relation to the Tax Laws Amendment (2009 Budget Measures No. 1) Bill 2009, Schedule 1 – Exemption Of Income Derived From Foreign Service. If the Committee is hearing these matters on Thursday as well we would be prepared to attend in person.

In our view the impacts of the proposed Legislative change will be:

- loss of taxable income for the exporter
- additional employee taxes and loss of GST Revenue
- additional impact on Treasury arising from increased unemployment and family benefit payments.

Retrospective Impact on Existing Commercial Arrangements and Employees' Contracts.

- There is no capacity to seek an increase under existing contract arrangements with our clients.
- For our existing current employees there is a disincentive for them to remain offshore, consequently they are more likely to return to Australia and we will be obliged to employ non Australian's in their stead.

Going Forward Basis

We will be uncompetitive in the International Services Sector as we are competing against foreign competitors who have a similar exemption.

In addition, where possible, we source product and services from other Australian taxpayers. Obviously if we were no longer competitive there will be no opportunity for them to continue exporting to the same extent.

Disincentive to work overseas

There will be reduced career development and career opportunity for the youth of Australia as they will be uncompetitive with their international counterparts. In addition, there will be reduced goodwill with developing nations as Australians are highly regarded when working overseas for providing support to local community and training and development for local workers. It is self evident that as a consequence of the reduced level of export services it will have an impact on our balance of payments.

There will be cashflow impacts on employees and employers unless certain Technical and Procedural issues are clarified prior to 1 July 2009. This will lead to a further increased cost to our businesses and the obvious impact on Revenue to the Treasury.

The short time frame in which these changes have been introduced result in increased uncertainty on employees, employers, families and an added burden in the current global economic crisis.

Technical Practical Ramifications

In addition, there are a myriad of technical uncertainties and difficult practicalities that will need to be resolved prior to 1 July 2009 for the Australian employer and employee not to inadvertently breach amendments to the Act and consequently suffer audit fines, penalties and GIC changes. We understand these matters have previously been raised with Treasury's international tax unit and more detailed submissions have been submitted by the accounting firms.

Our suggestions to remedy the proposed abolition are as follows:

- Leave the law as it is.
- Allow s23AF exemption to be extended to projects which take place in taxable jurisdictions which are in developing nations and hardship localities.
- Extend the fringe benefit tax exemptions for necessarily incurred benefits such as travel to and from site, vehicles and accommodation on, or close to, sites, expenses of preparing foreign tax returns, etc.
- Either exempt Australian and foreign employers from having to withhold double tax from wages or at least allow them to self-assess for PAYG variations to reduce PAYG withholding down to the amount that is not paid overseas.
- Alternatively, defer the law change for 12 months to allow a suitable transition time for Australian companies currently employing Australian labour on existing overseas projects.

Yours sincerely

ROBERT MOLKENTHIN
CHIEF FINANCIAL OFFICER
LYCOPODIUM MINERALS PTY LTD

MARK HUGHES
CHIEF FINANCIAL OFFICER
AUSDRILL

cc: john.fauvet@au.pwc.com
bcc: markh@ausdrill.com.au, bob.evers@byrnecut.com.au