9th November 2011

David Monk
Secretariat
House of Representatives Economics Committee
Parliament House
CANBERRA ACT 2601

Dear David

Inquiry into the Minerals Resource Rent Tax Bills 2011

Thank you for the opportunity to provide comment to the House of Representatives Economics Committee on the Minerals Resource Rent Tax Bills 2011 (MRRT Bill).

The Association of Mining and Exploration Companies (AMEC) is the peak national industry representative body for mineral exploration and mining companies within Australia, many of which have iron ore and coal projects (see **attached** list).

AMEC records its extreme disappointment in relation to the very short period in which to comment on the final composition of this **unfair**, **discriminatory**, and extremely **complex** tax legislation.

AMEC was strongly opposed to the original Resource Super Profits Tax (RSPT) announced in May 2010, including the detrimental effect the tax would have on Australia`s international competitiveness and attractiveness as a place in which to invest, and on the effect it could have on regions and communities throughout Australia. Those '*national interest*' concerns still remain.

AMEC has also been publicly opposed to the replacement Minerals Resource Rent Tax (MRRT) announced by the Government in July 2010. This resulted from a private and secret consultation process with three large multi-national companies and the execution of a Heads of Agreement with those companies, which formed the basis of the tax design.

AMEC was not consulted in any way during this private 'negotiation' process.

These companies had no mandate to act on behalf of the many other mining and exploration companies with projects or interests throughout Australia. These conglomerates also did not have any mandate to act in any way on behalf of AMEC or its wide membership base.

These companies undoubtedly negotiated the Heads of Agreement with the Government with the interest of their own shareholders in mind, and not necessarily for the benefit of the wider industry.

AMEC considers that the MRRT regime is an ill conceived, punitive, discriminatory and irrefutably badly designed tax, and should be rescinded in its entirety. It is not a strategic long term tax reform program.

It is also very apparent that despite constructive and proactive AMEC comments and recommendations in various submissions and letters there is still no full understanding or appreciation of the significant '*points of difference*' between emerging and mature miners, that '*one size does not fit all',* that there are significant anti competitive issues at the domestic and international levels, and that **this tax is unfair**.

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Small emerging mining companies have different risk profiles, do not have significant cash flow levels, have lower economies of scale and consequently a higher unit-cost of production in comparison to large mature miners, making it difficult for them to compete with large mature miners in the domestic and global markets.

The design of the proposed MRRT will provide mature miners with significant tax shields and provide additional financial advantages to large mature multi-national conglomerates.

Expert independent modeling (**attached**) by the University of Western Australia[1] highlights the **unfair and discriminatory** nature of the MRRT regime, and shows that there will be at least a **4% difference** in the level of effective total taxation between a project that was in existence before 2 May 2010 (mostly the three major iron ore and coal miners), and that applying to less advanced or new developments taking place after 1 July 2012.

The modelling shows that before the introduction of the MRRT the average total tax (income tax and royalties) for mining companies would have been around 38%, and post MRRT the total effective tax rate increases to over 40% and over 44% for existing and new projects respectively.

This means that under the proposed MRRT regime a small emerging miner will be paying an extra 6% in tax, compared to a large mature miner that will be paying an extra 2%. A chart is **attached** to highlight this issue.

This differential, which is caused by a large tax shield provided to mature miners who are able to claim a significant deduction for the market value of their 'starting base assets', allows them to reduce their MRRT liability for the remaining life of the mine or 25 years, whichever is the lesser.

Small emerging miners are not able to claim such an extensive 'tax shield', and therefore their 'unit cost of production' and ultimate effective tax rate is detrimentally affected.

This is a significant issue in respect of competitive neutrality and equality, and is fundamental to AMEC`s continued opposition to the current design of the MRRT.

The Government has unsuccessfully attempted to provide some recognition to Small Miners through Division 45 (Low Profit Offsets) and Division 200 (Simplified MRRT Method) of the Bill.

Industry believes the low profit offset threshold offers very little protection as the Government`s Policy Transition Group(PTG) had set out to do. The $50m MRRT profit threshold, based on discussions with AMEC members, has no real protection and does not address the uncertainty, nor the inequities and identified discrimination between small emerging miners and large mature miners.

The Government`s Policy Transition Group has also previously attempted to recognise the issues facing small miners, and in it`s December 2010 Report[2] to Government recommended the concept of a '**safe**

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[1] Dr. Pietro Guj, Research Professor, Centre for Exploration Targeting, The University of Western Australia – 'Is MRRT competitively neutral?'.

[2] PTG Report Dec 2010, page 38 and recommendation 21

harbour of 10mtpa'. Although this was in relation to alternative valuation methods, the 'safe harbour' concept of 10mtpa per se has considerable merit to be used as a threshold on which to trigger the MRRT.

Industry is of the view that adoption of such a 'safe harbour' in relation to **production levels / tonnage** would be realistic and have the capacity to provide a more reasonable and acceptable tax shelter for small emerging miners, than the $50m MRRT threshold proposed within the Bill.

AMEC considers that such a production / tonnage threshold is more appropriate on which to apply an economic rent and recognises the 'non renewable' nature of the resource (Division 1 of the Bill).

Based on industry estimates the current proposed $50m per annum subjective MRRT profit threshold equates to a very small mining operation producing approximately 1mtpa to 1.5mtpa of iron ore (based on current commodity prices).

Following consultation with industry and expert accountants / consultants a production level / tonnage of 10mtpa is considered a more realistic level on which to apply the threshold, above which will trigger an MRRT liability.

The production level threshold will provide a more acceptable differentiation between a 'small emerging miner' and a more advanced miner.

It is therefore proposed that the $50m MRRT profit threshold should be removed from the Bill and replaced with a new production / tonnage threshold for a mining project producing more than 10mtpa of saleable coal or iron ore.

Such a threshold would also significantly reduce compliance and administration costs for industry and government, and remove much of the business uncertainty surrounding small and emerging miners and their investors.

In an attempt to reduce the administrative and compliance costs for small miners the Government has also proposed a Simplified MRRT method (described in Division 200 of the Bill), in which a taxpayer with no MRRT liability for that year can elect to use this method and reduce their record keeping burden. Currently, the legislation states that the taxpayer will permanently extinguish **all allowance components** (deductions) that they would have otherwise been entitled to, should they make such an election for the MRRT Simplified Method.

The permanent extinguishment of all allowances is considered to be extremely onerous and should be removed from the legislation. Industry believes that without the ability to include the use of allowances the Simplified Method has no attraction particularly when giving consideration to a merger or being acquired down the track.

In addition to the poor design of the tax, AMEC remains concerned that the effective rate of tax (comprising income tax, royalties and MRRT) of iron ore producers will be at the high end of the global tax scale in a competitive resources market, where Australia is being challenged by an increasing number of jurisdictions for investment and projects (such as Africa, South America, Canada, Finland, Russia, Indonesia).

The **attached** table also highlights AMEC concerns that there is an increasing trend towards capital raisings being directed to international projects, and a corresponding reduction for Australian projects.

In view of current global economic uncertainties, AMEC is of the view that a strategy should be adopted that seeks to grow the Australian minerals exploration and mining industry, and the associated future taxation revenue stream, rather than penalise it at a time when it is entering a further period of sustained growth.

Our preference therefore is that the MRRT legislation is withdrawn in its entirety, and if not, it should be significantly amended to such an extent that the **<u>unfairness and discriminatory nature of the tax is addressed.</u>**

In an attempt to address some of the identified discrimination and inequities within the proposed MRRT legislation and create a more even playing field between large mature miners and emerging miners it is **strongly recommended** that the Bill be amended as follows:

1. That the $50m MRRT profit threshold should be removed from the Bill and replaced with a new production / tonnage threshold for a mining project producing more than 10mtpa of saleable coal or iron ore, and
2. MRRT only becomes liable to be paid in the year following the first of large multi nationals or wholly owned subsidiaries, become liable for payment of MRRT. (This should be separately calculated; on the one hand a calculation for coal and the other, for iron ore), and
3. The rate of MRRT payable by taxpayers should not exceed a “benchmark rate” calculated by reference to the highest “Benchmark Taxpayer” (large multi nationals) MRRT Liability for the preceding MRRT year by applying an agreed formula in relation to each class of taxable resource (either coal or iron ore), and
4. That the taxpayer be allowed to bring forward all elements of the allowance components into a later year, had the taxpayer elected to use the Simplified Method, and
5. Exclude magnetite concentrate from the MRRT legislation in recognition of the significant processing and specialist infrastructure and investment in order to bring the commodity to a saleable product.

There are also a number of other valid recommendations that are contained in AMEC`s submission dated October 2011 to Treasury **attached** on the second draft of the MRRT legislation.

I would be pleased to appear before the Committee or provide further information at your convenience.

Yours sincerely

Simon Bennison
Chief Executive Officer

Submission to Commonwealth Treasury -

Second Exposure Draft and Explanatory Material on the Minerals Resource Rent Tax (MRRT)

5th October 2011

Contents

Introduction

1. Thank you for the opportunity to provide this submission on the second Exposure Draft (ED) and Explanatory Material (EM) on the Minerals Resource Rent Tax.

2. The Association of Mining and Exploration Companies (AMEC) is the peak national industry representative body for mineral exploration and mining companies within Australia, many of which have iron ore and coal projects.

3. AMEC's strategic objective is to secure an environment that fosters mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

4. It is in this context that AMEC provides the following additional comments and observations on the Exposure Draft and Explanatory Material.

5. In doing so, AMEC records its extreme disappointment in relation to the very short consultation period in which to consider the issues and implications for AMEC members, and then provide comments on the complex and extensive Explanatory Material supporting the proposed Exposure Draft.

Executive Summary

6. AMEC continues to consider that the MRRT regime is an ill conceived, punitive, discriminatory and irrefutable bad tax, and should be rescinded in its entirety.

7. Nothwithstanding this, AMEC continues to constructively participate in the process, and therefore provides the following constructive responses to the MRRT Exposure Draft and Explanatory Material, some of which will require consideration and subsequent amendment to the proposed legislation.

'Points of difference' and anti competitive issues

8. AMEC has consistently stated that the significant '*points of difference'* between emerging mining companies and large conglomerates have not been adequately considered or addressed during the MRRT consultation process, the Policy Transition Group Report – *New Resource Taxation Arrangements*, or the latest versions of the MRRT Exposure Draft and Explanatory Material.

9. In its response dated 14th July 2011 to the Minerals Resource Rent Tax (MRRT) draft legislation, AMEC raised serious concerns that the proposed MRRT regime will be anti competitive and create an uneven playing field between small emerging iron ore and coal miners, and large established conglomerates.

10. Expert independent modelling by the University of Western Australia[1] shows that there will be at least a 4% difference in the level of effective total taxation between a project that was in existence before 2 May 2010 (mostly the three major iron ore and coal miners), and that applying to less advanced or new developments taking place after 1 July 2012.

11. The modelling shows that before the introduction of the MRRT the average total tax (income tax and royalties) for mining companies would have been around 38%, and post MRRT the total effective tax rate increases to over 40% and over 44% for existing and new projects respectively.

12. This means that under the proposed MRRT regime a small emerging miner will be paying an extra 6% in tax, compared to a large mature miner that will be paying an extra 2%.

13. This differential is a significant issue in respect of competitive neutrality, and puts small emerging miners at a significant financial disadvantage, compared to a mature miner.

14. As detailed in its other submissions, AMEC has stated that there are significant ***'points of difference'*** between the characteristics and needs of small and emerging mining companies compared to the large mature multi-national conglomerates.

15. These differences include:
    - Lower economies of scale and consequently higher unit-cost of production,
    - Inability to individually fund their dedicated transport and port infrastructure and inability to access proprietary transport infrastructure belonging to existing major producers even if declared open to third party access. This severely limits the scope of their developments in spite of the magnitude of their resource base,
    - Often single-project status which prevents the transfer of unutilised losses and royalty allowances to a related project, thus delaying cash flows, reducing profitability and introducing the risk that some losses will never be recovered,
    - There is **not a *"one size fits all approach"*** to this tax given the significant differences in business models and financing strategies between the large and smaller producers,
    - Generally higher risk profiles reducing the availability and increasing the cost of both equity and debt funding, and
    - Inability to attract and retain quality key professional personnel, other than at very high cost, because of more restricted career paths and significant demand from major companies.

16. Unfortunately, these 'Points of difference' have not been acknowledged or addressed in the proposed MRRT legislation.

[1] Dr. Pietro Guj, Research Professor, Centre for Exploration Targeting, The University of Western Australia – 'Is MRRT competitively neutral?'.

Recommendations

17. ***That small emerging miners should be sheltered from the MRRT by increasing the minimum profitability threshold from $50 million to $500 million.***

18. ***That the MRRT Profit Threshold should maintain its real value by means of annual indexation.***

19. ***That consideration is given to allowing a taxpayer to elect for the simplified MRRT Method and not have entitlements to the allowance components extinguished. (This proposal would enable small taxpayers the advantage of a reduced compliance burden, but without the permanent loss of the allowance components).***

20. ***That the taxpayer be allowed to bring forward all elements of the allowance components into the later year, on the basis of what would have been allowed, had the election not have been made in prior years, and that appropriate records are maintained to support the relevant components.***

21. ***Removal of the restrictions to transfer allowances where the Alternative Valuation Method is elected by an emerging miner.***

22. ***That competitive neutrality should be re-established, a level playing field and incentive created for new developments by either:***

    - ***Reducing the MRRT rate for newly developed projects by at least 5%, i.e. from 30% to 25% before the Extraction Allowance for at least the first 10 years of their productive life,***

    - ***<u>Or</u>, at a minimum, a phasing-in of the MRRT should be implemented for small companies and emerging developments to reach the full MRRT rate of 22.5% after the Extraction Allowance over the same 10-year horizon.***

23. ***That the pre-mining losses provisions are amended to allow exploration expenditure incurred by an entity prior to earning an interest in the tenement to be included in an entity`s pre-mining expenditure.***

24. ***That exploration expenditure should still qualify as pre-mining expenditure even if it does not lead to the farmee acquiring an interest, and would attach to another pre-mining project interest which relates to the same taxable resource.***

25. ***That small emerging miners (<10mtpa) are excluded from the instalment system for a minimum period of 2 years from the introduction of MRRT, or from commencing production.***

26. ***That the lodgement date for small merging miners is extended until the end of the eighth month (28 February for a 30 June year end) to allow sufficient time for MRRT returns to be completed and lodged.***

27. ***That Division 210 uses a "sole or dominant purpose" test rather than an "incidental purpose" test.***

28. ***The ATO should grant a period of amnesty from interest and penalties of at least one year from the date on which the first MRRT return is due.***

29. ***That all mechanisms included in the Organisation for Economic Cooperation and Development (OECD) Transfer pricing Guidelines should be capable of being applied.***

30. ***That magnetite concentrate should be excluded from the provisions of the MRRT legislation.***

31. ***A review similar to that conducted in 2008/09 by the Australian National Audit Office into the administration of the Petroleum Resource Rent Tax regime, should be carried out after 3 years from implementation of the MRRT to determine whether it operates in the manner in which it was intended to apply.***

32. ***That the MRRT legislation will not be extended to commodities other than iron ore and coal.***

Discussion of key issues

MRRT Profit Threshold and the administrative and compliance burden

33. AMEC has consistently expressed extreme concern in relation to the significant administrative and compliance burden faced by industry and government should a low $50million Minerals Resource Rent Tax (MRRT) profit threshold be applied.

34. In this regard, the Government`s Policy Transition Group (PTG) has also expressed a desire to minimise administrative and compliance costs by introducing a 'safe harbour' methodology[2] for mining operations with combined production lower than 10 million tonnes per annum (mtpa) of saleable coal or iron ore. The subsequent Exposure Draft (Section 125-15) has provided a small miner with the opportunity of electing to use a simplified MRRT method for record keeping purposes, however in making such an election all allowance components that relate to a mining project interest, or a pre mining project interest, are extinguished.

35. Should the 'safe harbour' methodology as suggested by the PTG of 10 mtpa be applied to the profit threshold at which MRRT becomes payable, the profit threshold would significantly increase from the proposed level of $50m to $500m per annum before the MRRT liability arises (this is based upon 10mtpa x $50 per tonne MRRT taxable profit, at current price forecasts).

36. AMEC considers that such a threshold is more realistic on which to apply an economic rent[3]. It also recognises the significant 'up front' capital expenditure that is required in order for a company to undertake successful exploration, finalise construction, commence viable production, and provide shareholders with a reasonable rate of return on their long term investment.

37. It is further noted that there is no publicly available rationale on which the Government has established the proposed $50m threshold, and accordingly appears to be a 'subjective' threshold level.

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[2] PTG Report Dec 2011, page 38.

[3] A resource rent tax is designed to capture a portion of the rents earned from the extraction of non renewable resources. Rent is defined as profit in excess of the normal return to capital invested in the project. Royalties are another mechanism for pricing resources.

38. An increase in the threshold would undoubtedly dramatically reduce the administration and compliance burden on industry <u>and</u> government, and be less of a business and investment dis-incentive.

Recommendation:

That small emerging miners should be sheltered from the MRRT by increasing the minimum profitability threshold from $50 million to $500 million.

Indexation of the MRRT Profit Threshold

39. In order to maintain the real value of the minimum MRRT profit threshold it should be indexed on an annual basis in accordance with the Australian Consumer Price Index. This is despite the fact that the PTG has suggested that automatic indexation of thresholds is not a feature of the Australian income tax system and that it could be included as part of the budget process[4].

40. The absence of any indexation would result in 'bracket creep', with the present value of the proposed threshold being diminished over time.

Recommendation:

That the MRRT Profit Threshold should maintain its real value by means of annual indexation.

Alternative Valuation Method

41. The Alternative Valuation Method (AVM) has been introduced as a short cut method to allow emerging miners (<10mtpa) a simpler method to work out the mining revenue attributable to their resources at the taxing point. However, where an emerging miner elects to use the AVM for a particular year this precludes them from transferring certain allowances and also combining interests in later years.

42. It is noted in the Explanatory Material that "***lower*** *than normal resource values could be generated by the alternative valuation method (because the prescribed rate of return on downstream capital could be too high for a particular operation)"* (para 14.85 – emphasis added). On the same basis a ***higher*** than normal resource value could be generated under the AVM.

43. It is the inherent nature of a short cut method that it will result in a proxy for the actual calculation based on the assumptions used. However in other legislation requiring complex calculations (eg tax consolidations), the use of a short cut method does not result in restrictions being imposed on a taxpayer.

44. The taxpayer should be allowed to carry forward all elements of the allowance components into the later years, on the basis of what would have been allowed, had the election not have been

[4] PTG Report, page 77.

made in prior years, and that appropriate MRRT records are maintained to support the relevant components.

45.AMEC strongly recommends the removal of the restrictions to transfer allowances where the AVM is elected by an emerging miner as it is both unnecessary and punitive, and it will act as a deterrent for emerging miners to make the election, which is contrary to the policy to introduce the AVM.

Recommendation:

Removal of the restrictions to transfer allowances where the Alternative Valuation Method is elected by an emerging miner.

Simplified MRRT method

46.The simplified MRRT concept is intended to provide small taxpayers with the opportunity of reducing their record keeping compliance burden. In practice, it is highly likely that all small taxpayers will still maintain full MRRT records to determine whether they are below the threshold and in the event of a future merger or acquisition and therefore the proposed simplified method will have no practical benefit to small miners.

Recommendations:

That consideration is given to allowing a taxpayer to elect for the simplified MRRT Method and not have entitlements to the allowance components extinguished. (This proposal would enable small taxpayers the advantage of a reduced compliance burden, but without the permanent loss of the allowance components).

That the taxpayer be allowed to bring forward all elements of the allowance components into the later year, on the basis of what would have been allowed, had the election not have been made in prior years, and that appropriate records are maintained to support the relevant components.

Competitive neutrality and inequity issues

47. In an attempt to address some of the identified discrimination and inequities within the proposed MRRT legislation and create a more even playing field between large mature miners and emerging miners a Discussion Paper drafted by BDO Corporate Tax (WA) Pty Ltd in September 2011 titled 'Propositions to Reduce inequities', proposed that the Bill be amended as follows:

- MRRT only becomes liable to be paid in the year following the first of Rio Tinto,BHP Billiton or Xstrata or wholly owned subsidiaries of the above named entities, become liable for payment of MRRT. (This should be separately calculated; on the one hand a calculation for coal and the other, for iron ore), and
- The ***rate*** of MRRT payable by taxpayers should not exceed a "benchmark rate" calculated by reference to the highest "Benchmark Taxpayer" (that is, one of RioTinto, BHP Billiton or Xstrata) MRRT Liability for the preceding MRRT year by

applying an agreed formula in relation to each class of taxable resource (either coal or iron ore).

48.AMEC supports these proposals as a mechanism in which to create a more even domestic playing field in relation to iron ore and coal producers.

49. In this regard, AMEC notes that the Commonwealth Government has created a precedent in previously recognising the impact of reform on small merging wine producers, through the Wine Equalisation Rebate program.

50. As an alternative to these new proposals, AMEC has previously recommended that competitive neutrality could be re-established, a level playing field and incentive created for new developments by either:

- Reducing the MRRT rate for newly developed projects by at least 5%, i.e. from 30% to 25% before the Extraction Allowance for at least the first 10 years of their productive life,
- Or, at a minimum, a phasing-in of the MRRT should be implemented for small companies and emerging developments to reach the full MRRT rate of 22.5% after the Extraction Allowance over the same 10-year horizon.

Recommendation:

That competitive neutrality should be re-established, a level playing field and incentive created for new developments by either:

- ***Reducing the MRRT rate for newly developed projects by at least 5%, i.e. from 30% to 25% before the Extraction Allowance for at least the first 10 years of their productive life,***
- ***Or, at a minimum, a phasing-in of the MRRT should be implemented for small companies and emerging developments to reach the full MRRT rate of 22.5% after the Extraction Allowance over the same 10-year horizon.***

Pre-mining losses – exploration expenditure

51.Farm in agreements often involve commitments by the in-coming participant to expend agreed amounts over time for the purpose of defining the presence and quantity and quality of possible mineralisation. This expenditure, sometimes complemented by cash consideration, would result in an in-coming participant progressively acquiring equity in a project. Under the provisions of the Income Tax legislation these expenditures are immediately deductible in the year in which they are incurred. Under the MRRT proposal these expenditures appear to be deemed to represent consideration for the acquisition of equity in the project and as a consequence would not create a pre-mining interest.

52. Such an approach would:

- Not recognise the fact that the value would have been added to the project as a result of exploration activities,

- Severely undermine the future capacity to raise funds for exploration and the capacity to spread risk, and
- Affect the fundamental principles and structure of future farm in/out agreements.

53. Under the draft MRRT legislation a *pre-mining* loss arises if during an MRRT year an entity holds a *pre-mining project* interest and the entity`s *pre-mining* expenditure for the interest exceeds the *pre-mining revenue* (S53-55). This requires a taxpayer to hold an interest in an exploration right (S53-40) in the year the expenditure is incurred.
54. Generally under a deferred farm out agreement a farmee does not commence to hold an interest in an exploration licence until specified exploration commitments have been satisfied. As a consequence, a farmee will not be able to claim a deduction for exploration expenditure as pre-mining expenditure until they acquire an interest in a tenement.
55. This is likely to lead to a change in the commercial arrangements for farm out agreements whereby a farmee may have to acquire a nominal interest in an exploration licence at the time of entering into the agreement.
56. This will lead to additional and unnecessary complexity in the industry, as well as a potential additional stamp duty impost as this type of arrangement will not qualify for farm out exemptions under various State Stamp Duty Acts.
57. AMEC recommends that the pre-mining losses provisions are amended to allow exploration expenditure incurred by an entity *prior* to earning an interest in the tenement to be included in an entity`s pre-mining expenditure. In this regard it is noted that *pre-mining project operations* included activities *preliminary* to holding the pre-mining project interest (S53-60(5)(b)).
58. AMEC also recommends that where a farmee incurs exploration expenditure which does not lead to the farmee acquiring an interest AMEC considers these restrictions are both unnecessary and punitive for small emerging miners and that they will act as a deterrent for emerging miners to make the Alternative Valuation Method election.
59. In the event that they decide not to proceed under the agreement, this expenditure should still qualify as pre-mining expenditure and would attach to another pre-mining project interest which relates to the same taxable resource. The same rationale applies for regional exploration (eg aerial mapping) for a taxable resource which does not relate to a specific pre-mining project interest.

Recommendations:

That the pre-mining losses provisions are amended to allow exploration expenditure incurred by an entity prior to earning an interest in the tenement to be included in an entity`s pre-mining expenditure.

That exploration expenditure should still qualify as pre-mining expenditure even if it does not lead to the farmee acquiring an interest, and would attach to another pre-mining project interest which relates to the same taxable resource.

MRRT instalments / Return lodgement / Frequency of returns/payment of MRRT

60. Under the MRRT regulations, default MRRT instalment rates have been prescribed for iron ore and coal of 8% and 3% respectively. A miner can elect to vary their instalment rate however penalties will apply where the varied amount is less than 85% of the actual amount.

61. Given the complexity of the MRRT legislation and the difficulty in accurately estimating MRRT instalments, AMEC recommends that small emerging miners (<10mtpa) are excluded from the instalment system for a period of 2 years from the introduction of MRRT, or from commencing production.

62. MRRT returns are due to be lodged on the first day of the six month after a miner`s year end which coincides with the due date for payment of a miner`s income tax liability. This places additional pressure on the small emerging miner`s limited in-house resources (and their advisors) to accurately calculate the annual MRRT liability.

63. AMEC recommends the lodgement date for small merging miners is extended until the end of the eighth month (28 February for a 30 June year end) to allow sufficient time for MRRT returns to be completed and lodged.

Recommendation:

That small emerging miners (<10mtpa) are excluded from the instalment system for a period of 2 years from the introduction of MRRT, or from commencing production.

That the lodgement date for small merging miners is extended until the end of the eighth month (28 February for a 30 June year end) to allow sufficient time for MRRT returns to be completed and lodged.

Anti avoidance measures /Compliance and Amnesty period

64. The proposed Division 210 dealing with anti-avoidance measures is based on the provisions of Part IVA of the Income Tax Assessment Act (1936), however it introduces a lower threshold for the application of the anti-avoidance rules than under Part IVA.

65. Under Division 210-10 the anti-avoidance provisions will apply where an entity obtains an MRRT benefit from a scheme and a taxpayer had a more than incidental purpose of entering into the scheme. This compares with the “sole or dominant purpose” test under Part IVA.

66. AMEC is accordingly concerned that this lesser threshold will create greater uncertainty for taxpayers entering into commercial arrangements in relation to their mining operations, as the case law established under Part IVA will not be able to be relied upon.

67. AMEC considers that the application of these provisions could result in dispute and litigation, particularly as they could apply to general tax planning not normally subject to anti-avoidance measures.

68. AMEC recommends Division 210 uses a “sole or dominant purpose” test rather than an “incidental purpose” test.

69. As AMEC has previously recommended, the ATO should also grant a period of amnesty from any form of interest and penalties of at least one year from the date on which the first MRRT return is due.

Recommendations:

That Division 210 uses a “sole or dominant purpose” test rather than an “incidental purpose” test.

The ATO should grant a period of amnesty from interest and penalties of at least one year from the date on which the first MRRT return is due.

Mining Revenue

70. AMEC notes that the mining revenue calculation is now subject to a more prescriptive two step process involving the determination of the realised sales and subtracting from it revenue attributable to downstream activities. In this regard, it is noted that the downstream amount comprises amounts actually paid or payable by the miner to procure downstream processing, transport and/or other activities from another entity.

71. In broad terms, it also requires a miner to assume (amongst other things) that in-house processing operations, transport and/or other activities were in fact carried out by a third party in a competitive market.

72. This approach will create a significant challenge in determining what an appropriate charge would need to be for different operations given their vastly different scope of operation, tonnage of ore throughputs, degree of blending and/or processing etc. In addition to making allowance for economies of scale, complexities will also arise in determining appropriate rates of return on capital for the hypothetical service suppliers.

73. Ideally this should not lead to a situation where the hypothetical cost of service would exceed the actual cost incurred in some of the most efficient operations.

74. AMEC considers that this approach in determining the revenue upstream of the taxing point is likely to have a significant impact in so far that taxable value is likely to be pushed upstream of taxing point in spite of the fact that the upstream activities are generally much riskier than the downstream parts of the value chain.

75. The Exposure Draft also attempts to clarify that certain assumptions must be made when determining the downstream value, and provides a prescribed hypothetical situation which the miner must use in applying the ‘arm`s length principle’, and appears to direct miners towards some form of ‘netback’ transfer pricing method.

76. The Exposure Draft and the Explanatory Material recommends use of appropriate transfer pricing methods as described in the Organisation for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines. AMEC consider this approach sound and recommends that all mechanisms included in the above guidelines should be capable of being applied. In particular AMEC would not wish to see the use of 'profit-split' or similar mechanisms to determine the taxable value excluded.

77. In addition in drafting the MRRT legislation cognisance should be taken of a distinct trend in new developments towards increased use of contractors particularly in the upstream parts of the value chain. This is a consequence of the difficulty experienced by small emerging producers in raising both equity and debt finance due to their higher risk profile. This set of circumstances will have the effect that emerging producers will have relatively low levels of asset values in their balance sheets and as a consequence becoming unable to benefit from the significant depreciation tax shields provided by the MRRT legislation to larger enterprises that own most of their assets.

Recommendation:

That all mechanisms included in the Organisation for Economic Cooperation and Development (OECD) Transfer pricing Guidelines should be capable of being applied.

Exclude magnetite concentrate from the MRRT legislation

78. The proposed MRRT legislation makes no recognition of the significant differences between magnetite iron ore and hematite iron ore. Unlike hematite which is the main constituent of 'Direct Shipping Ore', magnetite iron ore requires significant processing and specialised infrastructure and considerable additional investment in order that the Fe content of the product is concentrated to an acceptable and marketable level.

79. Without such 'value adding' the crude magnetite ore would have no commercial value as there are no ready markets for it.

80. An appropriate amendment excluding magnetite concentrate from the MRRT legislation is therefore considered appropriate.

Recommendation:
That magnetite concentrate should be excluded from the provisions of the MRRT legislation.

Review of the MRRT legislation

81. A review similar to that conducted in 2008/09 by the Australian National Audit Office into the administration of the Petroleum Resource Rent Tax regime, should be carried out after 3 years

from implementation of the MRRT to determine whether it operates in the manner in which it was intended to apply.

Recommendation:

A review similar to that conducted in 2008/09 by the Australian National Audit Office into the administration of the Petroleum Resource Rent Tax regime, should be carried out after 3 years from implementation of the MRRT to determine whether it operates in the manner in which it was intended to apply.

Range of commodities covered by the MRRT legislation

82. AMEC members remain concerned that the scope of the MRRT could be widened to commodities other than iron ore and coal, despite the Government`s stated intention not to do so.
83. Such a commitment should therefore be enshrined in the MRRT legislation to ensure that does not eventuate without the sanction of both Houses of the Australian Parliament.

Recommendation:

That the MRRT legislation will not be extended to commodities other than iron ore and coal.

5th October 2011

Patrick Sedgley
Manager, Resource Tax Unit
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: resourcetax@treasury.gov.au

Dear Patrick

Second Exposure Draft and Explanatory Material on the Minerals Resource Rent Tax

I refer to our meeting in Canberra on 4th October 2011, and also thank you for the opportunity to provide comment on the Second Draft of the Minerals Resource Rent Tax (MRRT) Explanatory Material released for public comment on 18th September 2011.

As you are aware, the Association of Mining and Exploration Companies (AMEC) is the peak national industry representative body for mineral exploration and mining companies within Australia, many of which have iron ore and coal projects.

AMEC's strategic objective is to secure an environment that fosters mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

It is in this context that AMEC provides the following additional comments and recommendations on the Second Exposure Draft and Explanatory Material.

In doing so, AMEC records its extreme disappointment in relation to the very short consultation period in which to provide comments on the complex and extensive Explanatory Material supporting the proposed Exposure Draft.

AMEC continues to consider that the MRRT regime is an ill conceived, punitive, discriminatory, anti competitive and irrefutable bad tax, and recommends that it should be rescinded in its entirety.

AMEC also notes that the Government`s approach to tax reform is built on three key elements to make the economy stronger, the tax system fairer, and the tax system simpler.[1]

Unfortunately, in AMEC`s view, the proposed MRRT regime is contradictory to all three key elements.

[1] Tax Forum Discussion Paper – Pages 2-3.

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Ph: 1300 738 184 Fax: 1300 738 185 info@amec.org.au www.amec.org.au

Nothwithstanding these opinions, AMEC continues to constructively participate in the process, and therefore provides several constructive recommendations in the attached submission relating to the proposed Legislation.

As you will note in the submission, AMEC continues to draw attention to the several significant '*points of difference'* between emerging mining companies compared to large mature conglomerates that have not been adequately considered or addressed during the MRRT consultation process to date.

These '*points of difference'*, and the recent expert independent modelling undertaken by the University of Western Australia, highlight the uneven playing field that will exist at both the domestic and international levels, and the fact that '*one size does not fit all'*.

Many of the recommendations contained in the AMEC are a genuine attempt to address the identified discriminatory, anti competitive, compliance and administrative issues created by the current 'ad hoc' design of the MRRT.

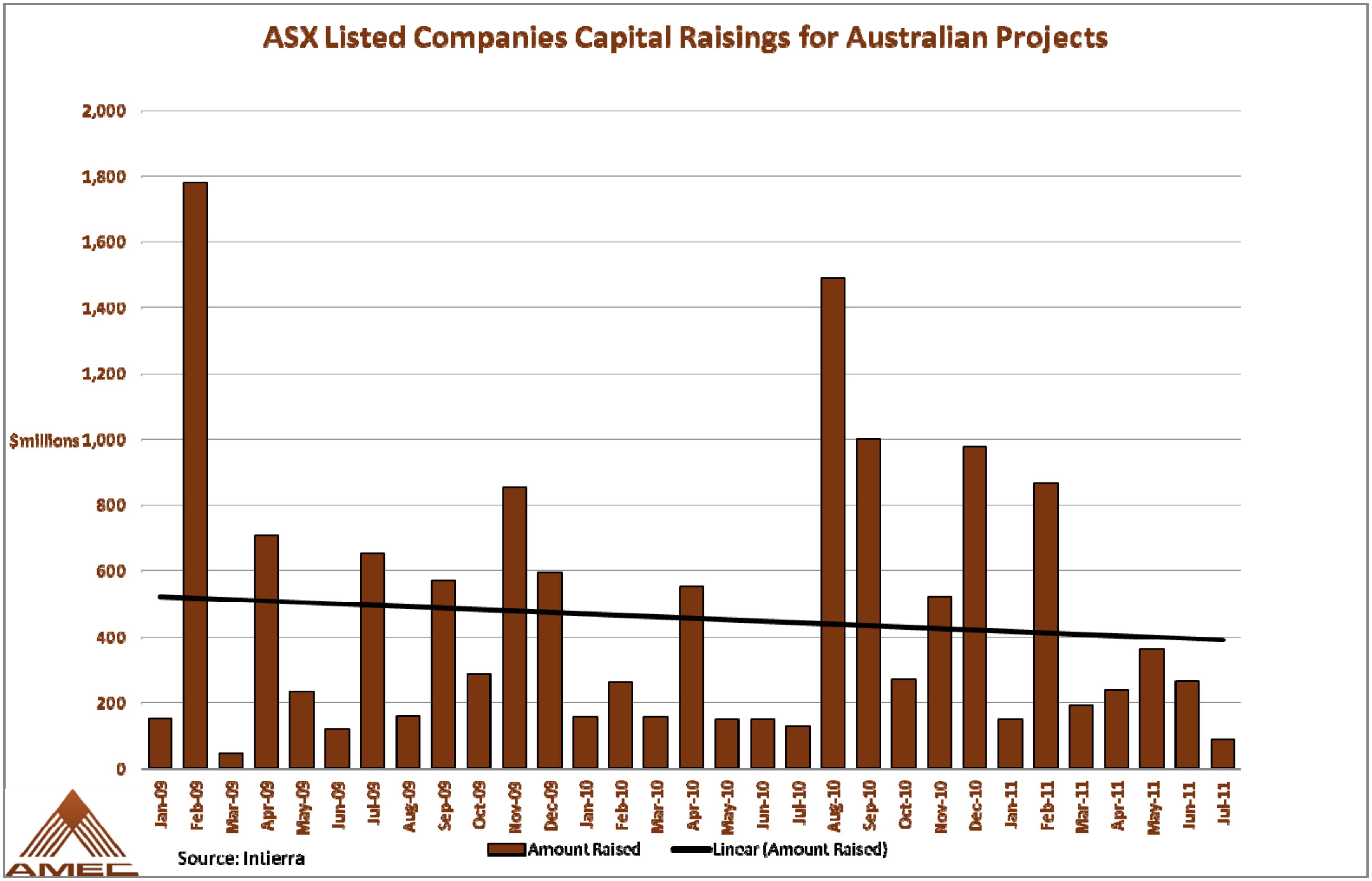
Adoption of all of the recommendations in the AMEC submission will also result in a significant improvement in Australia`s declining reputation as a safe place in which to invest.

It will also be in the '*national interest'* and assist in removing some of the uncertainties and reduced confidence that currently prevail over the 'engine room' of the Australian economy.

As I have previously stated, please feel free to contact me at any time should you have any queries or require clarification on the content of the AMEC submission.

Yours sincerely

Simon Bennison
Chief Executive Officer


ASX Listed Companies Capital Raisings for Australian Projects
$millions
2,000
1,800
1,600
1,400
1,200
1,000
800
600
400
200
0
Jan-09
Feb-09
Mar-09
Apr-09
May-09
Jun-09
Jul-09
Aug-09
Sep-09
Oct-09
Nov-09
Dec-09
Jan-10
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Sep-10
Oct-10
Nov-10
Dec-10
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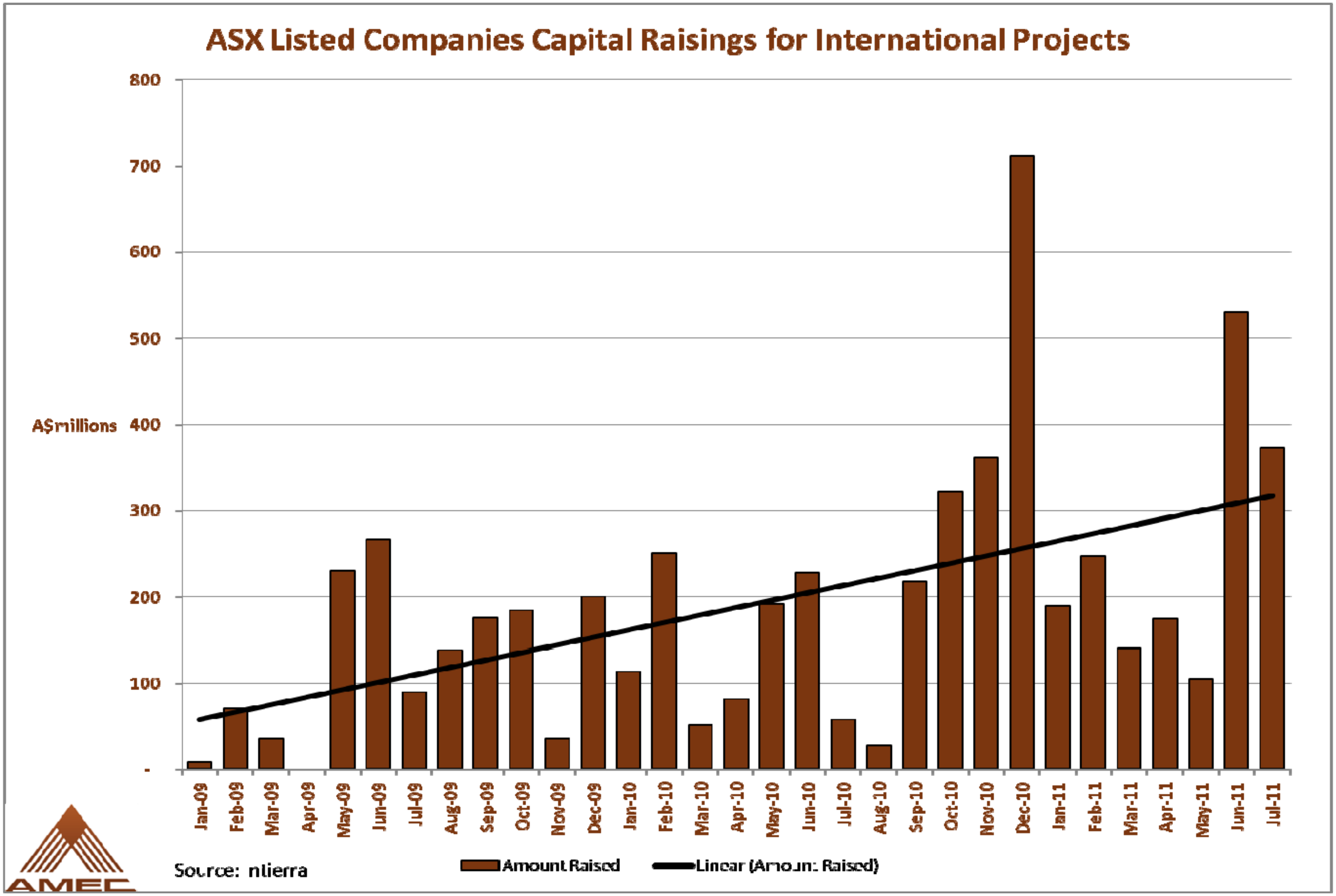
Mar-11
Apr-11
May-11
Jun-11
Jul-11
Amount Raised
Linear (Amount Raised)
Source: Intierra



ASX Listed Companies Capital Raisings for International Projects
A$millions
800
700
600
500
400
300
200
100
-
Jan-09
Feb-09
Mar-09
Apr-09
May-09
Jun-09
Jul-09
Aug-09
Sep-09
Oct-09
Nov-09
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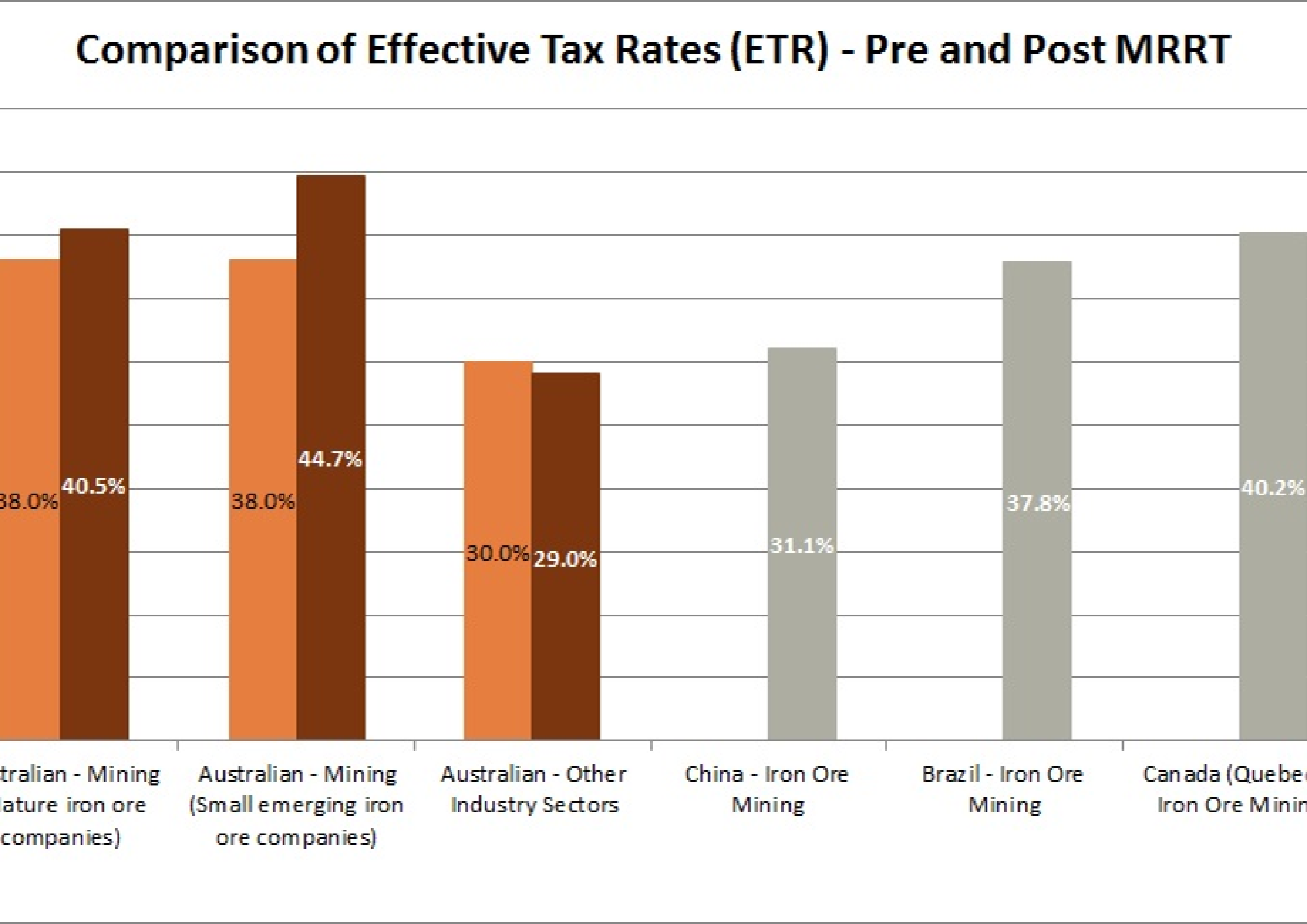
Source: Intierra
Amount Raised
Linear (Amount Raised)



Comparison of Effective Tax Rates (ETR) - Pre and Post MRRT
38.0%
40.5%
38.0%
44.7%
30.0%
29.0%
31.1%
37.8%
40.2%
tralian - Mining
lature iron ore
companies)
Australian - Mining
(Small emerging iron
ore companies)
Australian - Other
Industry Sectors
China - Iron Ore
Mining
Brazil - Iron Ore
Mining
Canada (Quebe
Iron Ore Minin

AMEC Full Members Directory

Full Members – mineral exploration and mining production companies

ABM Resources NL
ABRA Mining Limited
Alchemy Resources Limited
Alkane Resources Ltd
Altona Mining Ltd
Anglo American Exploration Pty Ltd
Aphrodite Gold
API Management Pty Ltd
Apollo Minerals
Aragon Resources Limited
Areva NC Australia
Argent Minerals Limited
Artemis Resources
Aruma Resources Ltd
Ashburton Minerals
Astro Resources NL
Atlantic Gold NL
Atlas Iron Limited
Aurora Minerals Ltd
Australian Bauxite Limited
Australian Mines Limited
Australian Pacific Coal Limited
Auzex Resources
Azumah Resources Limited
Bandanna Energy Limited
Bass Metals
Bauxite Resources Limited
BC Iron Limited
Beadell Resources
Blackham Resources Limited
Blackwood Corporation Ltd
Bondi Mining Ltd
Breakaway Resources
Brighton MiningGroup Limited
Brockman Resources Limited
Bulletin Resources
Integra Mining Limited
Iron Ore Holdings
Iron Road Limited
Ironbark Zinc Limited
Ironclad Mining
Jindalee Resources Ltd
Jupiter Mines Ltd
Kagara Ltd
Kimberley Diamond Company
Krucible Metals Pty Ltd
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Lodestar Minerals Limited
Lonrho Mining Ltd
Macarthur Minerals Limited
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Mantle Mining Corporation Limited
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Metallica Minerals Ltd
Metals X Limited
Meteoric Resources NL
MetroCoal Ltd
Midas Resources Limited
Minara Resources
Mincor Resources NL
Mindax Limited
Minemakers Limited
Mineral Deposits Limited
MM Mining Ltd
Moly Mines Limited
Montezuma Mining Company Limited
Mount Gibson Iron Limited
Mount Magnet South

Cameco Australia Pty Ltd
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Carpentaria Exploration Limited
Catalpa Resources Limited
Cauldron Energy
Cazaly Resources Ltd
Chesser Resources Ltd
China Yunnan Copper Australia Limited
Civil & Mining Resources Pty Ltd
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Consolidated Tin Mines Limited
Cortona Resources Limited
Cullen Resources Limited
D'Aguilar Gold Limited
De Grey Mining Ltd
Diatreme Resources Limited
Discovery Metals Limited
Doray Minerals
Dragon Energy
Eagle Eye Metals
East Coast Minerals NL
Eastern Iron Ltd
Emergent Resources Limited
Empire Resources Limited
Emu Nickel NL
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Energia Minerals
Energy and Minerals Australia Limited
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Ferrowest Limited
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FYI Resources Ltd
Galaxy Resources Ltd
Gascoyne Resources
Murchison Metals
Mutiny Gold Limited
Navigator Resources Limited
Northern Minerals Limited
Northwest Resources Limited
Orion Metals Limited
Paladin Energy Ltd
Panoramic Resources Ltd
Peak Resources
Peel Mining Ltd
Pioneer Resources
Planet Metals Ltd
Platinum Australia Limited
Platsearch NL
Polymetals Mining Limited
Poseidon Nickel Limited
Ramelius Resources
Red River Resources
Reed Resources
Regis Resources
Renaissance Minerals Limited
Resource Mining Corporation Limited
Rex Minerals Ltd
Rey Resources
Robust Resources Limited
Rubianna Resources
Sandfire Resources NL
Saracen Mineral Holdings Limited
Shaw River Manganese Limited
Sheffield Resources
Silver Lake Resources
Silver Swan Group
Solomon Gold Plc
South Boulder Mines Ltd
Southern Cross Goldfields
St George Mining Limited
Stanmore Coal Ltd
Superior Resources Limited
Syndicated Metals Limited
Talisman Mining Limited
Teck Australia Pty Ltd
Temby Minerals Pty Ltd
Terrain Minerals Limited
Territory Resources Limited
Thomson Resources
Thundelarra Exploration

Gindalbie Metals Ltd
Gold & Copper Resources Pty Ltd
Gold Road Resources
Golden Cross Resources Limited
Golden West Resources
Green Rock Energy Ltd
Guildford Coal Limited
Gunson Resources Ltd
Hampton Hill Mining NL
Hancock Prospecting Pty Ltd
Hannans Reward Ltd
Hemisphere Resources Limited
Heron Resources Ltd
Horseshoe Metals Ltd
Image Resources NL
Impact Minerals Limited
IMX Resources NL
Independence Group NL

Limited
TPL Corporation Limited
Trafford Resources Limited
Traka Resources Limited
Tri-Star Coal Company
Uranex NL
Ventnor Resources Limited
Venture Minerals
Venturex Resources Limited
Venus Metals Corporation
Western Areas NL
Westgold Resources Limited
White Rock Minerals
Wright Prospecting Pty Ltd
YTC Resources Limited
Zenith Minerals Limited

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Associate Members – companies or organisations who provide goods or services to mineral exploration and mining companies

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AECOM
Aeroquest Airborne
AGF Charter Finance P/L
Alliance Contracting
Allion Legal
ALS
ALS Group P/L – QLD
Anwyl Consulting
APEX Geoscience Ltd
Aspermont Ltd
Aurecon
Aust Drilling Industry Assoc
Aust'n Prospectors and Miners Hall of Fame
Australian Securities Exchange
Austwide Mining Title Management P/L
BDO (Queensland) P/L
Beilby
Boart Longyear Australia P/L
Boyer Exploration & Resource Management
bpworkingcapital
Bureau Veritas – Kalassay
Castledine Gregory
Challenge Drilling
ChemCentre
Chep Australia
Choice One
City Acceptance Corporation
Kasa Consulting
Kellie Hill Consulting
Kenex P/L
Kimberly-Clark
KPMG
Landoptions
Lavan Legal
LD Operations
Leading Initiatives Worldwide P/L
Linc
Locantro Asset Management
Lynx Integrated Systems
Macquarie Bank Ltd
McKenzie Moncrieff
McMahon Mining Title Services P/L
McMullen Nolan Surveyors
MHR Surveyors
MKT – Taxation Advisors
MorrisCorp
Multipro IT
Native Title Heritage Community Solutions
Newexco Services Ltd
NewSat Ltd
Nomad
North Queensland Miners Assoc Inc
North West Infrastructure
Nutwork
OnCall Interpreters
Optika Solutions P/L
Opus International Consultants
Pennock Executive Recruiting

P/L
Clayton Utz
CompliSpace P/L
Corrs Chambers Westgarth
CPR Communications & Public Relations
Cube Consulting
Dalcassian Consultants
DDH1 Drilling
Deloitte
Digirock P/L
DiMap Australia
Dingle Bird Environmental P/L
DLA Piper Australia
Dow Corning
Downing Teal
Ecologia Environmental Consultants P/L
Emerson Stewart
Environment Land Heritage
Environmental Resources Management
Ernst & Young
Forge Creative
Fragomen
Freehills
FTI Consulting
Fugro Airborne Surveys
Fyson & Associates
Genalysis Intertek
Genserve
GFA & Associates
GFR Group
Gilbert + Tobin
GRA Everingham
Greencap
Haines Surveys P/L
Helmsec
Hetherington Exploration & Mining Title Services
HopgoodGanim Lawyers
Hubo Resources Co. P/L
Humanis
Indirect Tax Consulting P/L
Industrial Safe P/L
Intec Ltd
Intierra
INTL Asia P/L
iQuest
Pitney Bowes Business Insight
Platform Communications
Polycom Australia P/L
Portable Analytical Solutions
Preston Consulting
Price Sierakowski
PricewaterhouseCoopers
Priority Appointments
Professional Public Relations (WA)
Proteus EPCM Engineers
Quantam Analytical Services
R-Group
Resource Information Unit
Roredata P/L
RPS Aquaterra
RSM Bird Cameron
Sanderson Drilling
SAS Group
SAS Telecom
SBD Drilling P/L
SDS Sustainable Drive Systems (Aust) P/L
Skill Hire WA P/L
Smith&Duda Consulting
Snowden Group
Solco Ltd
Squire Sanders
Strategen
Strathearn Insurance Brokers
Symposium
Telstra Business Centre – Central Perth
Telstra Shop West Perth
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Tetra Tech
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