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The Treasury
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To whom it may concern,

RE: Innovative Business CGT Concession – Exposure Draft Legislation

Thank you for the opportunity to provide feedback on the exposure draft legislation, explanatory materials and legislative instrument to implement the proposed innovative business CGT concession (**IBCC**).

RSM Australia is a national firm with origins in Western Australia, where we continue to maintain a significant presence. A substantial part of our client base comprises junior mineral exploration companies (**Junior Explorers**) that are listed, or preparing to list, on the Australian Securities Exchange (**ASX**). This submission is on our own behalf and in the interests of those clients.

We support the policy objective of preserving an incentive for early, at-risk investment in young Australian businesses with significant growth potential. Our concern is that the IBCC, as presently drafted, withholds that incentive from Junior Explorers – a cohort whose risk profile is materially indistinguishable from, and in many respects more acute than, that of the start-ups the concession is designed to support, and whose activity sustains the discovery pipeline on which Australia's largest export industry depends.

Our submission is predicated on six recommendations, each designed to ensure that Junior Explorers are appropriately accommodated. It is, in the alternative, recommended that the Junior Minerals Exploration Incentive (**JMEI**), which has not been renewed beyond the income year ended 30 June 2025 (**FY25**), be reinstated.

This submission does not comment on the broader operation of the exposure draft materials, on which we expect Treasury will receive detailed input from the professional bodies.

We would welcome the opportunity to discuss any aspect of this submission.

Yours sincerely,

Liam Telford
Partner, Tax Technical

RSM

1. Context

1.1 Significance of Junior Explorers

Mineral exploration is the necessary precursor to every future Australian mining project. The mining industry accounts for approximately 10% ~~per cent~~ of Australia's Gross Domestic Product (GDP) and close to 60% of its exports[1]. That contribution is not, however, self-sustaining. It rests on a pipeline of discoveries which must be continually replenished, and it is Junior Explorers who replenish it. Over the decade to 2021, Junior Explorers accounted for approximately 45% of Australian exploration expenditure and 73% of significant mineral discoveries[2], including three of the five Tier 1 deposits discovered in that period - Mt Holland, Hemi and Julimar, each of them in Western Australia[3].

Discovery is also becoming harder. Australia now records only 12 to 15 significant discoveries each year, and the inflation-adjusted cost of a significant discovery has risen approximately four-fold over two decades, to some USD$200m[4].

1.2 Significance of CGT discount

The manner in which this work is funded is central to our submission. Junior Explorers generate no revenue during the exploration phase and cannot pay dividends. An investor's entire return is therefore a capital gain, realised, if at all, on discovery or acquisition[5]. As the Reserve Bank has observed, Junior Explorers rely almost exclusively on listed equity to finance their operations[6]. Institutional capital is largely absent from this end of the market, with the consequence that retail and high net worth investors - precisely the individuals, trusts and partnerships to whom the CGT discount was directed - are the marginal funders of Australian drilling programmes. The CGT discount is not incidental to that investment decision; it is what preserves sufficient post-tax return to justify an exposure in which the great majority of prospects never become mines. The Minerals Council of Australia estimates that the announced changes reduce investor returns in the sector by at least 19%[7]

1.3 Recent reforms

This is the third contraction in support for exploration capital within eighteen months. The JMEI, which permitted explorers to convert losses from greenfields exploration expenditure into credits distributed to investors in newly issued shares, was not renewed beyond FY25[8]. Separately, prospecting, exploring and drilling for minerals can no longer constitute core R&D activities[9], so such claims as Junior Explorers have made under the R&D Tax Incentive have generally depended upon the supporting activity limb - which the reforms announced in the 2026-27 Federal Budget propose to remove entirely from 1 July 2028, while confining refundability to companies operating for less than ten years[10]. A Junior Explorer that could recently offer its investors a JMEI credit, an R&D refund and a 50% CGT discount can now offer none of the three. A comparable technology business retains the CGT discount under the IBCC.

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[1] Composition of the Australian Economy - Snapshots - 2026
[2] Richard Schodde, MinEx Consulting, *Outlook for the Australian Junior Sector*, keynote presentation delivered to the Mines & Money Conference, Melbourne, June 2023.
[3] Ibid. Mt Holland (lithium, 2016), Hemi (gold, 2019) and Julimar (nickel-PGE, 2020)
[4] Ibid.
[5] Minerals Council of Australia, submission to the Senate Economics Legislation Committee inquiry into the Treasury Laws Amendment (Tax Reform No. 1) Bill 2026, 9 June 2026.
[6] Reserve Bank of Australia, 'Exploration and the Listed Resource Sector', *Bulletin*, September 2012.
[7] Minerals Council of Australia, 'CGT changes abandon Australia's junior minerals explorers', 11 September 2026.
[8] Division 418 of the ITAA 1997. The incentive was last extended by $100 million over four years to 30 June 2025.
[9] Paragraph 355-25(2)(a) of the ITAA 1997.
[10] Australian Taxation Office, 'Tax Reform — better targeting the Research and Development Tax Incentive', recording the measures announced in the 2026-27 Budget on 12 May 2026.

1.4 Government priorities

This bears directly on the Government's stated priorities. Through the Critical Minerals Production Tax Incentive (**CMPTI**), the Commonwealth has committed an uncapped 10% refundable offset, estimated at some $7bn over the coming decade, to the processing and refining of Australia's 31 listed critical minerals from 1 July 2027[11]. That commitment presupposes a supply of deposits to process. Junior Explorers are the cohort that finds them, yet the IBCC as drafted is closed to them. The Commonwealth would thus subsidise the downstream conversion of critical minerals while withdrawing the settings that fund their discovery. The CMPTI is moreover administered by the Industry Secretary and the Commissioner jointly. The Industry Secretary already registers resources companies of exactly this kind.

Exploration capital is also internationally mobile. The Government's own impact analysis for the CMPTI identified Canada's Critical Mineral Exploration Tax Credit, a 30% credit for exploration expenditure renounced to flow-through share investors[12]. A principal competitor therefore subsidises discovery directly, while the present drafting withdraws support at that end of the value chain. At least one Junior Explorer has reportedly shelved an ASX listing in favour of Canada in response to the announced CGT changes[13].

2. Symmetry

Junior Explorers and the early-stage technology start-ups to which the IBCC is evidently directed are, in economic substance, the same proposition. Each operates in a protracted pre-revenue phase in which the object is not to generate income but to prove a concept. For a Junior Explorer, that proof consists in the discovery and delineation of an economically viable resource; for a technology start-up, in the validation of a product or platform through prototypes, user traction or protectable intellectual property. In neither case is the enterprise's principal asset its present cash flow. It is the contingent future value of what is being developed – value established, if at all, only after years of expenditure funded wholly by external equity. That the underlying activity is drilling rather than software engineering is a difference of subject matter, not economic character.

Indeed, paragraph 1.4 of the exposure draft explanatory materials identifies the special features that justify special treatment for technology start-ups: assets that are difficult to value because they are novel, value tied to the ideas and personal contributions of founders and early employees, and rapid growth from a zero or low-cost base over a short period. Each of those features attaches to a Junior Explorer:

- **Valuation** – a Junior Explorer's portfolio is worth what the geological information says it is worth. That information is created by drilling, and until a resource is defined the asset is genuinely novel and difficult to value;

- **Human capital** – the value of a Junior Explorer is overwhelmingly the geological judgement of a small technical team, held through equity including employee share schemes, exactly as in a technology start-up;

- **Cost base and growth profile** – shares are typically issued by Junior Explorers for one or two cents against a nil cost base. A discovery re-rates the company within months. The mismatch between cost base indexation and this return profile is at its most acute in these circumstances; and

[11] *Future Made in Australia (Production Tax Credits and Other Measures) Act 2025*; Division 419 of the ITAA 1997
[12] Department of Industry, Science and Resources, *Impact Analysis: Critical Minerals Production Tax Incentive* (2025), published by the Office of Impact Analysis.
[13] https://www.theaustralian.com.au/business/mining-energy/junior-explorer-turns-its-attention-to-canada-after-chalmers-tax-changes-spook-investors/news-story/dd28da32835bc7e16531ac3936a9d1bf

- **Risk** – The Minerals Council of Australia estimates that only one in every thousand exploration sites ultimately becomes a mine. Few technology portfolios carry that rate of failure[14].

There is, in light of this, no principled basis upon which to treat Junior Explorers differently from technology start-ups.

3. Current exclusion

The exposure draft materials, in their present form, exclude Junior Explorers. The ways in which it does so are described below.

3.1 The listing exclusion at paragraph 115-155(1)(c)

The provision treats quotation on a stock exchange as a proxy for corporate maturity. In the exploration sector, that proxy does not hold. Australia has no deep private venture market for mineral exploration, and Junior Explorers accordingly list early and at modest scale precisely because the ASX discharges the function that venture capital performs in other sectors - a point reflected in the Reserve Bank's observation, noted above, that Junior Explorers rely almost exclusively on listed equity to finance their operations. A newly quoted explorer capitalised at $12m, with no revenue and a single tenement package, is not on any view a mature enterprise. It is nonetheless excluded from the IBCC, while an unlisted company of identical size, age and risk profile is not.

The transitional rules mitigate, but do not cure, this defect. A company listed before 11 September 2026 may qualify in respect of interests issued before 1 July 2027 but can issue no eligible interest thereafter. Junior Explorers return to the market for fresh equity at frequent intervals, each such raising being how drilling is funded. The practical consequence is that the IBCC would attach to a closed historical pool of shares while remaining unavailable to precisely the capital it is intended to mobilise.

3.2 The innovative company test and exposure draft legislative instrument

The innovative company test at subsection 115-155(2) is framed around developing new or significantly improved products, processes, services or marketing or organisational methods for commercialisation. Mineral discovery is the generation of new geological knowledge and the conversion of that knowledge into a defined resource. It is innovative in substance but does not sit naturally within that language, and Junior Explorers should not be left to argue the point asset-by-asset.

The exposure draft legislative instrument compounds the problem, because a company must satisfy conditions under each of sections 6 to 10, so that failure at any one point is fatal. We accept that a Junior Explorer may satisfy section 7, most obviously through the external investments condition. It will ordinarily fail the remainder outright:

- **Section 6 (genuine focus on commercialisation) -** the R&D expenditure condition depends on notional deductions under Division 355, which are unavailable for exploration for the reasons above at 1.3. The IP commercialisation condition requires a patent, certified design or plant breeder’s right, whereas Junior Explorers hold granted exploration licences and JORC-compliant data, which are not registrable intellectual property of that kind.
- **Sections 8 to 10 (scale, broader markets, competitive advantage) -** accelerator programs, export revenue, overseas R&D findings and multi-jurisdiction IP filings have no analogue in exploration, notwithstanding that every discovered deposit is by definition sold into a global commodity market.

The exposure draft legislative instrument is intended to furnish certainty to companies that would otherwise face difficulty in establishing their eligibility. That purpose is defeated where, as here, no available condition is

[14] T Constable, 'Proposed CGT changes a big hit to minerals exploration and the future of Australian mining', Minerals Council of Australia media release, 27 May 2026.

capable of being met by the cohort in question. We would welcome the opportunity to assist in framing appropriate conditions for exploration companies.

3.3 Land ownership as an ineligible activity under paragraph 115-155(6)(a)

A Junior Explorer's principal asset is statutory tenure granted under State or Territory mining legislation: a right to explore for minerals vested in the Crown, exercisable over land which may be unallocated Crown land, pastoral lease, freehold, reserve or land subject to native title. Junior Explorers also commonly hold ancillary surface interests - freehold or leasehold acquired for access, camps, water or infrastructure corridors - and may retain royalty interests over tenements previously divested or farmed out.

We do not suggest that Parliament intends exploration to constitute property development or land ownership within paragraph 115-155(6)(a). The limb is directed, as its statutory neighbours confirm, at passive and financial activity rather than at resource extraction. But the expression is undefined; the ancillary interests described above are commonplace; and the recent enactment of an expanded definition of 'real property' in the ITAA 1997, together with the deeming of mining, quarrying and prospecting information as taxable Australian real property for principal asset test purposes, demonstrates how readily land-related concepts in this Act can be given an extended operation[15]. Given that the consequence of the limb applying is the permanent disqualification of every interest in the company, companies and their advisers ought not be left to infer the answer. We recommend an express statement in the explanatory memorandum or, preferably, a carve-out in subsection 115-155(7).

3.4 The direct issue requirement in paragraph 115-150(1)(e)

A CGT asset is an IBCC asset only if it is issued by the IBCC company directly to the holder, or to the trustee of a relevant trust, a venture capital partnership or an employee share trust. The exposure draft explanatory materials explain that the requirement is directed at confining the concession to contributions of capital made to the company rather than to secondary market transactions. We accept that rationale. Applied to an unlisted company, where transfers are infrequent and negotiated, it operates as intended. Applied to a listed Junior Explorer it produces consequences which, in our view, have not been fully appreciated.

The ordinary retail investor in a Junior Explorer acquires shares on market. Those shares are transferred by another holder rather than issued by the company, and can never be IBCC assets, however long they are held and whatever the company's status. Only securities issued under an initial public offering, a placement, an entitlement offer, a share purchase plan or a direct issue of options or convertible notes can qualify. On market acquisitions are, however, what sustains the secondary market price and the liquidity against which each primary raising is priced and underwritten; they are not idle transactions unconnected with the funding of exploration. The consequence is that the concession will attach to a minority of the holdings of the very investors it is designed to attract.

The requirement also imposes a tracing burden which is severe for an individual and, in some cases, impossible for the company. A holder whose parcel has been assembled over a decade from an initial public offering, two share purchase plans, an entitlement offer and a series of on market purchases holds fungible ordinary shares of a single class. That holder must nevertheless identify, parcel by parcel, which shares were issued directly, on what date, whether the company was then registered and an IBCC company, and whether each parcel has satisfied the three-year holding period. The company, for its part, can identify the allottees under each raising but cannot know whether those allottees remain holders, nor which registered holders acquired on market - which makes the notice obligations in subparagraph 115-155(8)(d)(ii) and subsection 115-160(7) impossible to discharge accurately.

Two further matters require confirmation. First, that securities issued under each of the standard primary capital raising mechanisms are directly issued for these purposes, including shares issued on the exercise of renounceable rights acquired from another holder and shares issued to participants in an entitlement offer

[15] *Treasury Laws Amendment (Strengthening Accountability for Tax Adviser Misconduct and Other Measures) Act 2026*, Schedule 2.

shortfall. Second, that a capital reconstruction does not cause a share to cease to be an IBCC asset. Consolidations are routine among Junior Explorers, commonly preceding a recapitalisation, and it should not be left to inference whether the resulting shares were issued at the time of the reconstruction or at the time of the original issue. Subsection 115-150(6) addresses replacement asset roll-overs but does not reach a reconstruction of this kind.

4. Fiscal cost

We anticipate that the cost of extending the IBCC to Junior Explorers will be modest, and materially lower than the cost of the concession as presently drafted. Companies within the cohort are, by definition, pre-revenue and loss-making, and the overwhelming majority never make a discovery. Revenue is therefore forgone only in the minority of cases in which an investor realises a gain - which is to say, only in those cases in which the Commonwealth simultaneously acquires a mining project, the company tax it generates, the employment it sustains and the State royalties it pays. The exposure is in any event bounded by the existing architecture of the Bill: the $50m aggregated turnover ceiling, the fifteen-year limit on incorporation, registration with the Industry Secretary, annual reporting, and the disqualified asset rules.

Two further considerations bear on the costing. The first is the counterfactual. Where the concession is what makes a marginal investment viable, the gain against which revenue is said to be forgone would not have arisen at all, and exploration capital is mobile enough that the counterfactual is not hypothetical. The second is the baseline. Gains of this kind attracted the general 50% discount until 1 July 2027, so measured against the position obtaining when these investments were made the proposal restores an existing setting for a narrow cohort rather than creating a new concession. Treasury also has an evidence base readily to hand: the statutory impact assessments prepared under section 418-190 of the ITAA 1997 measured the additional exploration attributable to the JMEI, and the Australian Bureau of Statistics publishes quarterly mineral exploration expenditure disaggregated between greenfields and brownfields activity. For comparison, the JMEI was last extended at a cost of $100m over four years, against the $7bn in CMPTI support estimated over the coming decade.

5. Recommendations

In light of the foregoing, we make the following five recommendations, as well as one alternative recommendation pertaining to the JMEI.

Recommendation 1: Create an exploration pathway

Insert a deeming rule so that a company whose predominant activity is greenfields mineral exploration in Australia is taken to satisfy the innovative company test and the predominant activity test, using the tested concepts already in Division 418 of the ITAA 1997.

Recommendation 2: Do not use stock exchange listing as the maturity test for Junior Explorers

The ASX is the venture capital market for Australian exploration. Replace or supplement paragraph 115-155(1)(c) with a size test (the existing $50m aggregated turnover test, and if needed a market capitalisation cap) for companies in this pathway.

Recommendation 3: Make the transitional listing rule prospective

If listing is retained as a disqualifier, the 11 September 2026 cut-off in paragraph 115-145(3)(a) should extend to shares issued after 1 July 2027 by companies that were listed before that date, so that existing explorers can still raise IBCC-eligible capital.

Recommendation 4: Add exploration-specific safe harbour conditions

Amend the exposure draft legislative instrument, as none of the five sets of conditions currently included are realistically attainable by a pre-revenue Junior Explorer.

Recommendation 5: Confirm that holding exploration tenure is not ‘land ownership’

Confirm, by express statement in the explanatory memorandum or, preferably, by a carve-out in subsection 115-155(7), that the holding of exploration tenure and ancillary surface interests does not constitute property development or land ownership for the purposes of paragraph 115-155(6)(a). The recent expansion of land-related concepts elsewhere in the ITAA 1997 makes that confirmation the more necessary.

Recommendation 6: Confirm the operation of the direct issue requirement for listed companies

Confirm that securities issued under each of the standard primary capital raising mechanisms satisfy paragraph 115-150(1)(e), that a capital reconstruction does not cause a share to cease to be an IBCC asset, and provide an administrable basis on which holders of fungible parcels may identify their IBCC assets. The notice obligations in subparagraph 115-155(8)(d)(ii) and subsection 115-160(7) should be capable of discharge by announcement to the market operator in the case of a company with quoted securities.

Recommendation 7: Reinstate the JMEI

If exploration is to remain outside the IBCC, the case for restoring a targeted exploration incentive becomes correspondingly stronger.

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