

EXPLANATORY STATEMENT

Issued by authority of the Minister for Housing and Assistant Treasurer

Income Tax Assessment Act 1997

Income Tax Assessment Amendment (Exploration for Minerals) Regulations 2020

The *Income Tax Assessment Act 1997* (Income Tax Act) provides for the calculation of the income tax liability of taxpayers. The Income Tax Act also provides a range of incentives including an incentive for investment in small minerals exploration companies undertaking greenfields minerals exploration in Australia – the junior minerals exploration incentive. The amount of this taxation incentive available in relevant income years is capped.

Section 909-1 of the Income Tax Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Income Tax Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Income Tax Act.

The purpose of the *Income Tax Assessment Amendment (Exploration for Minerals) Regulations 2020* (the Amending Regulations) is to amend the *Income Tax Assessment Regulations 1997* to maximise the utilisation of exploration credits under the junior minerals exploration incentive.

Broadly, the junior minerals exploration incentive provides a mechanism for small minerals exploration companies to encourage investment by converting the tax losses they incur while undertaking exploration activity into exploration credits that they may distribute to new investors. Exploration credits entitle Australian resident investors to receive a refundable tax offset or equivalent tax benefit.

There is an annual cap on the total amount of exploration credits that can be created – the annual exploration cap. Entities that wish to create and distribute credits must apply to the Commissioner of Taxation who determines the exploration credit allocation of each entity in the order of receipt of applications until the available credits are exhausted.

In some circumstances credits may be allocated under the incentive by the Australian Taxation Office to small minerals exploration companies but have become unusable because the exploration companies have failed to raise capital in relation to that allocation in the income year, or they have not incurred expenditure in relation to the capital raising within the allowed time, or not realised a tax loss.

In these circumstances the unused credits may, in effect, be transferred to a later income year for allocation to ensure that the maximum benefit of the incentive is available to use over the life of the program to encourage additional greenfields minerals exploration in Australia.

The Amending Regulations maximise the utilisation of exploration credits under the junior minerals exploration incentive by increasing the amount of the annual exploration cap for the 2020-21 income year that is available to be allocated by the Commissioner of Taxation under the incentive. The amount of the increase in the cap

is equal to the amount of credits identified that have become unusable in prior income years despite having been allocated to small minerals exploration companies in a prior year.

Targeted consultation on the Amending Regulations was undertaken with the Australian Taxation Office, however, pursuant to section 17 of the *Legislation Act 2003*, no public consultation was undertaken on the Amending Regulations as they are administrative in nature.

The changes do not affect the substantive meaning or operation of the provisions other than transferring an amount of unusable exploration credits to a later income year. Details of the Amending Regulations are set out in Attachment A.

The Amending Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amending Regulations commence on the first day of the first quarterly period after registration on the Federal Register of Legislation.

A Statement of Compatibility with Human Rights is at Attachment B. The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Details of the *Income Tax Assessment Amendment (Exploration for Minerals) Regulations 2020*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Income Tax Assessment Amendment (Exploration for Minerals) Regulations 2020* (the Amending Regulations).

Section 2 – Commencement

The Amending Regulations commence on the first day of the first quarterly period after registration on the Federal Register of Legislation.

Section 3 – Authority

The Amending Regulations are made under the *Income Tax Assessment Act 1997*.

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Amendments

Section 418-103.01 of item 1 of Schedule 1 to the Amending Regulations increases the amount of the annual exploration cap for the 2020-21 income year that is available to be allocated by the Australian Taxation Office under the incentive. The amount of the increase in the cap is the amount of credits identified that has become unusable in prior income years despite having been allocated to small minerals exploration companies in a prior year.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Income Tax Assessment Amendment (Exploration for Minerals) Regulations 2020

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Income Tax Assessment Amendment (Exploration for Minerals) Regulations 2020* (the Amending Regulations) is to amend the *Income Tax Assessment Regulations 1997* to maximise the utilisation of exploration credits under the junior minerals exploration incentive.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.