

# EXPOSURE DRAFT

EXPOSURE DRAFT
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Inserts for  
**Tax and Superannuation Laws  
Amendment (2014 Measures No. 7) Bill  
2014: Exploration development incentive**

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Schedule #, items 1 to 20	The day this Act receives the Royal Assent.	
2. Schedule #, item 21	The later of: (a) immediately after the commencement of the provisions covered by table item 1; and (b) immediately after the commencement of Schedule 4 to the <i>Treasury Legislation Amendment (Repeal Day) Act 2014</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
3. Schedule #, items 22 to 29	The day this Act receives the Royal Assent.	

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## Schedule #—Exploration development incentive

### Part 1—Main amendments

#### *Income Tax Assessment Act 1997*

##### 1 Section 67-23 (after table item 23)

Insert:

27 exploration development incentive the \*tax offset available under Subdivision 418-B

##### 2 At the end of Part 3-45

Add:

### Division 418—Exploration for minerals

#### Table of Subdivisions

Guide to Division 418

418-A Object of this Division

418-B Exploration development incentive tax offset

418-C Exploration development incentive franking credit

418-D Creating exploration credits

418-E Issuing exploration credits

418-F Excess exploration credits

#### Guide to Division 418

##### 418-1 What this Division is about

Generally speaking, you are entitled to a tax offset for exploration credits issued to you, but exploration credits issued to corporate tax entities instead give rise to franking credits.

Greenfields minerals explorers can create, and then issue, exploration credits for their greenfields minerals expenditure for the 2015-16, 2016-17 and 2017-18 income years. However, the

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total amount of exploration credits for an income year is limited to the explorer's maximum exploration credit amount.

The explorer is liable to pay excess exploration credit tax if the explorer issues exploration credits in excess of that maximum exploration credit amount.

Note: Excess exploration credit tax is imposed by the *Excess Exploration Credit Tax Act 2014*, and the amount of the tax is set out in that Act.

## Subdivision 418-A—Object of this Division

### Table of sections

418-5 Object of this Division

### 418-5 Object of this Division

The object of this Division is to encourage investment in minerals exploration in Australia by allowing the benefit of losses from minerals exploration to flow to shareholders who share in the risk of the exploration.

## Subdivision 418-B—Exploration development incentive tax offset

### Table of sections

#### Entitlement to exploration development incentive tax offset

418-10 Who is entitled to the tax offset—ordinary case

418-15 Who is entitled to the tax offset—life insurance company

418-20 Entitlement of member of a trust or partnership to a share of exploration credits

418-25 Trust or partnership not entitled to the tax offset in some circumstances

#### Amount of exploration development incentive tax offset

418-30 The amount of the tax offset

## Entitlement to exploration development incentive tax offset

### 418-10 Who is entitled to the tax offset—ordinary case

You are entitled to a \*tax offset for an income year if:

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- 1 (a) an \*exploration credit is issued to you under  
2 Subdivision 418-E for the income year; and  
3 (b) you are not a \*corporate tax entity; and  
4 (c) you are an Australian resident during the whole of that  
5 income year.

6 Note: An entity that is a trust or partnership is not entitled to a tax offset  
7 under this section if the exploration credit is fully flowed through to  
8 the members of the trust or partnership: see section 418-25.

## 9 **418-15 Who is entitled to the tax offset—life insurance company**

- 10 (1) An entity is entitled to a \*tax offset for an income year if:  
11 (a) the entity is a \*life insurance company; and  
12 (b) an \*exploration credit is issued to the entity under  
13 Subdivision 418-E for the income year; and  
14 (c) the entity is an Australian resident during the whole of that  
15 income year; and  
16 (d) were the exploration credit to be a \*franked distribution  
17 made:  
18 (i) by the same entity that issued the credit; and  
19 (ii) in the same circumstances in which the credit was  
20 issued;  
21 the exploration credit would be a distribution to which  
22 paragraph 207-110(1)(b) would apply.
- 23 (2) If:  
24 (a) an \*exploration credit is issued to a \*life insurance company;  
25 and  
26 (b) paragraph (1)(d) applies in relation to only part of the  
27 exploration credit;  
28 this Division applies as if that part of the exploration credit, and the  
29 part of the exploration credit in relation to which that paragraph  
30 does not apply, were 2 separate exploration credits issued to the  
31 life insurance company.

## 32 **418-20 Entitlement of member of a trust or partnership to a share of** 33 **exploration credits**

- 34 (1) If:  
35 (a) you are a \*member of a trust or partnership during the income  
36 year; and
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- 1 (b) an \*exploration credit is issued to the trust or partnership  
2 under Subdivision 418-E for the income year; and
- 3 (c) the trust or partnership is not a \*corporate tax entity; and
- 4 (d) you are an Australian resident during the whole of that  
5 income year; and
- 6 (e) the trustee of the trust, or the partnership, determines that you  
7 are entitled to a share of the exploration credits issued to the  
8 trust or partnership for the income year; and
- 9 (f) the trustee of the trust, or the partnership, gives you a  
10 statement, in accordance with subsection (4), informing you  
11 of that entitlement;
- 12 you are taken, for the purposes of this Subdivision, to have been  
13 issued with an exploration credit, for the income year, of an  
14 amount equal to your share of the exploration credits issued to the  
15 trust or partnership for the income year.
- 16 (2) Despite subsection (1), you are not taken, under that subsection, to  
17 have been issued with an \*exploration credit to the extent that, if  
18 the exploration credit referred to in paragraph (1)(b) were a  
19 \*franked distribution of the same amount made:
- 20 (a) at the time of the determination referred to in  
21 paragraph (1)(e); and
- 22 (b) in relation to the same interest, in the trust or partnership, in  
23 relation to which your entitlement to a share of the  
24 exploration credits issued to the trust or partnership during  
25 the income year arises;
- 26 the terms and conditions under which the trust or partnership  
27 operates would not permit you to be paid the amount, or the  
28 proportion, of the franked distribution that would reflect your  
29 entitlement referred to in paragraph (1)(e).
- 30 (3) Despite subsection (1), you are not taken, under that subsection, to  
31 have been issued with an \*exploration credit to the extent that, if  
32 the exploration credit referred to in paragraph (1)(b) were a  
33 \*franked distribution of the same amount:
- 34 (a) \*flowing indirectly through one or more trusts or partnerships  
35 that are the same as the one or more trusts or partnerships  
36 that, apart from section 418-25, would have been entitled to a  
37 \*tax offset under this Subdivision in relation to:
- 38 (i) that exploration credit; or
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- 1 (ii) another exploration credit from which that exploration  
2 credit is directly or indirectly derived; and  
3 (b) made:  
4 (i) by the same entity that issued that exploration credit;  
5 and  
6 (ii) in the same circumstances in which that exploration  
7 credit was issued;  
8 you would not be entitled to a tax offset under Division 207 in  
9 relation to the franked distribution.
- 10 (4) A statement referred to in paragraph (1)(f) must:  
11 (a) be in the \*approved form; and  
12 (b) be given to you on or before the due date:  
13 (i) if the trust or partnership is an \*investment body for  
14 \*Part VA investments—for giving to the Commissioner  
15 an \*annual investment income report in respect of the  
16 \*financial year most closely corresponding to the  
17 income year; or  
18 (ii) otherwise—for the trust or partnership to lodge its  
19 \*income tax return for the income year.
- 20 (5) A trust or partnership that has given one or more statements under  
21 paragraph (1)(f) relating to \*exploration credits for an income year  
22 must give to the Commissioner, on or before the due date referred  
23 to in paragraph (4)(b) in relation to that income year, a report that:  
24 (a) relates to all the statements that the trust or partnership has  
25 given under paragraph (1)(f) relating to exploration credits  
26 for that income year; and  
27 (b) is in the \*approved form.

## 28 **418-25 Trust or partnership not entitled to the tax offset in some** 29 **circumstances**

- 30 If:
- 31 (a) a trust or partnership would, apart from this section, be  
32 entitled to a \*tax offset for an income year under  
33 section 418-10 in relation to an \*exploration credit; and  
34 (b) one or more \*members of the trust or partnership are taken,  
35 under section 418-20, to have been issued with one or more  
36 exploration credits in relation to that exploration credit; and

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1 (c) the sum of the amounts of those exploration credits is equal  
2 to the amount of that exploration credit;  
3 the trust or partnership is not entitled to the tax offset under  
4 section 418-10 for the income year.

## 5 **Amount of exploration development incentive tax offset**

### 6 **418-30 The amount of the tax offset**

- 7 (1) The amount of your \*tax offset under this Subdivision for an  
8 income year is the sum of:  
9 (a) all the \*exploration credits issued to you under  
10 Subdivision 418-E; and  
11 (b) all the exploration credits taken under section 418-20 to have  
12 been issued to you;  
13 for the income year.
- 14 (2) However, if:  
15 (a) an entity is a trust or partnership; and  
16 (b) one or more \*members of the trust or partnership are taken  
17 under section 418-20 to have been issued with one or more  
18 \*exploration credits for an income year;  
19 the amount of the entity's \*tax offset under this Subdivision for the  
20 income year is reduced by the sum of amounts represented by  
21 those shares of exploration credits.

### 22 **Subdivision 418-C—Exploration development incentive** 23 **franking credit**

#### 24 **Table of sections**

25	418-50	Exploration development incentive franking credit—ordinary case
26	418-55	Exploration development incentive franking credit—life insurance company

### 27 **418-50 Exploration development incentive franking credit—** 28 **ordinary case**

- 29 (1) A \*franking credit arises in the \*franking account of a \*corporate  
30 tax entity (other than a \*life insurance company) if:  
31 (a) an \*exploration credit is issued to the entity under  
32 Subdivision 418-E during an income year; and

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- 1 (b) if the entity were not a corporate tax entity, the entity would  
2 be entitled to a \*tax offset under Subdivision 418-B in  
3 relation to the exploration credit.
- 4 (2) The amount of the \*franking credit is the amount of the \*tax offset  
5 to which the entity would be entitled under Subdivision 418-B if:  
6 (a) the entity were not a \*corporate tax entity; and  
7 (b) no other \*exploration credits were issued to the entity during  
8 the income year.
- 9 (3) The \*franking credit arises at the same time the \*exploration credit  
10 is issued.

## 11 **418-55 Exploration development incentive franking credit—life** 12 **insurance company**

- 13 (1) A \*franking credit arises in the \*franking account of a \*life  
14 insurance company if:  
15 (a) an \*exploration credit is issued to the life insurance company  
16 under Subdivision 418-E during an income year; and  
17 (b) paragraph 418-15(1)(d) does not apply in relation to the  
18 exploration credit; and  
19 (c) if that paragraph were to apply in relation to the credit, the  
20 life insurance company would be entitled to a \*tax offset  
21 under Subdivision 418-B in relation to the exploration credit.
- 22 (2) The amount of the \*franking credit is the amount of the \*tax offset  
23 to which the \*life insurance company would be entitled under  
24 Subdivision 418-B if no other \*exploration credits were issued to  
25 the life insurance company during the income year.
- 26 (3) The \*franking credit arises at the same time the \*exploration credit  
27 is issued.

## 28 **Subdivision 418-D—Creating exploration credits**

### 29 **Table of sections**

30	418-70	Entities that may create exploration credits
31	418-75	Meaning of <i>greenfields minerals explorer</i>
32	418-80	Meaning of <i>greenfields minerals expenditure</i>
33	418-85	Exploration credits must not exceed maximum exploration credit amount
34	418-90	Modulation factors
35	418-95	Effect on tax losses of creating exploration credits

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## 1 418-70 Entities that may create exploration credits

- 2 (1) An entity may create *exploration credits* for an income year if:
- 3 (a) the entity was a \*greenfields minerals explorer in the  
4 previous income year; and
- 5 (b) on or before 30 September in the \*financial year  
6 corresponding to the income year, the entity has given to the  
7 Commissioner, in the \*approved form, a declaration stating:
- 8 (i) their estimated \*tax loss for the previous income year;  
9 and
- 10 (ii) their estimated \*greenfields minerals expenditure, for  
11 the previous income year.
- 12 (2) However, the entity cannot create the exploration credits:
- 13 (a) before the legislative instrument under section 418-90  
14 declaring the modulation factor for the income year has been  
15 registered under Division 2 of Part 4 of the *Legislative*  
16 *Instruments Act 2003*; or
- 17 (b) for the 2018-19 income year or a later income year.
- 18 (3) A failure to comply with subsection (1) or paragraph (2)(a) does  
19 not invalidate the creation of an \*exploration credit.
- 20 (4) An \*exploration credit is to be expressed as a monetary amount.
- 21 (5) The entity cannot make more than one decision to create  
22 \*exploration credits for an income year, and the decision is final  
23 and irrevocable.

## 24 418-75 Meaning of *greenfields minerals explorer*

- 25 (1) An entity is a *greenfields minerals explorer* in an income year if:
- 26 (a) the entity has \*greenfields minerals expenditure for the  
27 income year; and
- 28 (b) during the income year, the entity is a disclosing entity  
29 (within the meaning of section 111AC of the *Corporations*  
30 *Act 2001*); and
- 31 (c) during the income year, the entity is a \*constitutional  
32 corporation; and
- 33 (d) neither:
- 34 (i) the entity; nor

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1 (ii) any other entity that is \*connected with or is an \*affiliate  
2 of the entity;  
3 has carried on any mining operations on a mining property  
4 for extracting \*minerals (except \*petroleum) from their  
5 natural site, for the purpose of producing assessable income.

6 (2) However, an entity is not a *greenfields minerals explorer* if a  
7 determination under section 418-175 has effect.

8 Note: Under section 418-175, the Commissioner may determine that an  
9 entity that is, or has been, liable to excess exploration credit tax is not  
10 to be treated as a greenfields minerals explorer.

## 11 **418-80 Meaning of *greenfields minerals expenditure***

12 (1) An entity's *greenfields minerals expenditure* for an income year is  
13 the sum of:

14 (a) the amounts of any deductions to which the entity is entitled  
15 under section 40-25 for that income year in relation to  
16 declines in value that:

17 (i) are declines in value of \*depreciating assets used for  
18 \*exploration or prospecting for \*minerals in an area to  
19 which subsection (2) of this section applies; and

20 (ii) are worked out under subsection 40-80(1); and

21 (b) the amounts of any deductions to which the entity is entitled  
22 under subsection 40-730(1) for that income year in relation to  
23 expenditure on exploration or prospecting for minerals in an  
24 area to which subsection (2) of this section applies.

25 (2) This subsection applies to an area:

26 (a) that is in Australia; and

27 (b) that is not, and is not in, any of the following:

28 (i) the coastal sea of Australia (within the meaning of  
29 subsection 15B(4) of the *Acts Interpretation Act 1901*);

30 (ii) an offshore area for the purpose of the *Offshore  
31 Petroleum and Greenhouse Gas Storage Act 2006*;

32 (iii) the Joint Petroleum Development Area (within the  
33 meaning of the *Petroleum (Timor Sea Treaty) Act  
34 2003*); and

35 (c) in relation to which the entity holds a \*mining, quarrying or  
36 prospecting right at the time of incurring the expenditure.

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Note: An offshore area and the Joint Petroleum Development Area include the territorial sea, the exclusive economic zone and the continental shelf of Australia.

- (3) For the purposes of subsection (1), disregard a deduction to the extent that:
- (a) it relates to \*exploration or prospecting for quarry materials, \*petroleum or oil shale; or
  - (b) it relates to activities (such as feasibility studies) undertaken to identify the viability of a mineral resource rather than its existence; or
  - (c) it relates to expenditure incurred in relation to a mineral resource that is at least inferred, or an ore reserve that is at least probable, in a report prepared in accordance with the requirements of:
    - (i) unless subparagraph (ii) applies—the document that is known as the Australasian Code for Reporting of Exploration Results, Minerals Resources and Ore Reserves and that took effect on 20 December 2012; or
    - (ii) such other document as the regulations prescribe; or
  - (d) it relates to expenditure incurred in relation to an area in which a mineral resource or ore reserve of a kind referred to in paragraph (c) is located.
- (4) To avoid doubt, subsection (1) does not apply in relation to a deduction to which you would be entitled under section 40-25 or subsection 40-730(1) (as the case requires) apart from the operation of another provision of a \*taxation law.

## 418-85 Exploration credits must not exceed maximum exploration credit amount

- (1) An entity must not create \*exploration credits for an income year (the *current income year*) of a total amount that exceeds the entity's \*maximum exploration credit amount for the income year.
- (2) The entity's *maximum exploration credit amount* for the current income year is worked out as follows:

<i>Method statement</i>
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- Step 1. Ascertain which of the following is the smallest amount:
- (a) the entity's estimated \*tax loss for the previous income year, as stated in the entity's declaration under paragraph 418-70(1)(b);
  - (b) the entity's actual tax loss for the previous income year;
  - (c) the entity's estimated \*greenfields minerals expenditure for the previous income year, as stated in the entity's declaration under paragraph 418-70(1)(b);
  - (d) the entity's actual greenfields minerals expenditure for the previous income year.
- Step 2. Multiply that smallest amount by the \*corporate tax rate applying to the previous income year.
- Step 3. Multiply the result of step 2 by the modulation factor declared under section 418-90 for the current income year. The result of this step is the entity's ***maximum exploration credit amount*** for the current income year.

- (3) In working out the entity's actual \*tax loss, or actual \*greenfields minerals expenditure, for the previous income year for the purposes of step 1 of the method statement in subsection (2), reduce that tax loss, or greenfields minerals expenditure, by the sum of:
- (a) all \*recoupments that the entity receives in relation to the entity's greenfields minerals expenditure for the previous income year; and
  - (b) any part of the entity's tax loss for the previous income year that would not be deductible in the current income year.
- (4) For the purposes of paragraph (3)(b), assume that the entity's assessable income for the current income year is sufficient to allow the entity to utilise the whole of that tax loss in relation to the current income year.
- (5) A failure to comply with this section does not invalidate the creation of an \*exploration credit.

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## 1 418-90 Modulation factors

- 2 (1) The Commissioner must, by legislative instrument, declare  
3 modulation factors in accordance with this section for each of the  
4 following:  
5 (a) the 2015-16 income year;  
6 (b) the 2016-17 income year;  
7 (c) the 2017-18 income year.
- 8 (2) The modulation factor for an income year is to be one if the  
9 Commissioner is satisfied that the total amount of \*exploration  
10 credits that could be created in respect of that income year will not  
11 exceed the following amount (the *exploration credit cap*) for the  
12 income year:  
13 (a) for the 2015-16 income year—\$25 million;  
14 (b) for the 2016-17 income year—\$35 million;  
15 (c) for the 2017-18 income year—\$40 million.
- 16 (3) If subsection (2) does not apply, the modulation factor for the  
17 income year is to be such a number as the Commissioner is  
18 satisfied would reduce the total amount of \*exploration credits that  
19 could be created in that income year to the exploration credit cap  
20 for the income year.
- 21 (4) In ascertaining for the purposes of subsection (2) or (3) the total  
22 amount of \*exploration credits that could be created in an income  
23 year (the *current income year*), the Commissioner is to:  
24 (a) use the information provided in declarations under  
25 paragraph 418-70(1)(b) for the previous income year; and  
26 (b) disregard the possible application of any modulation factor.
- 27 (5) A failure to comply with subsection (2), (3) or (4) does not  
28 invalidate the declaration of a modulation factor for an income  
29 year.
- 30 (6) A declaration made under subsection (1) is a legislative instrument,  
31 but section 42 (disallowance) of the *Legislative Instruments Act*  
32 *2003* does not apply to the declaration.

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## 1 418-95 Effect on tax losses of creating exploration credits

- 2 (1) If an entity creates any \*exploration credits in respect of a \*loss  
3 year, the amount of the entity's \*tax loss for the loss year is  
4 reduced by the amount worked out as follows:

5 
$$\frac{\text{The sum of all the *exploration credits the entity creates in respect of the *loss year}}{\text{The *corporate tax rate}}$$

- 6 (2) However, if the amount worked out under subsection (1) equals or  
7 exceeds what would (apart from this section) be the entity's \*tax  
8 loss for the \*loss year, that tax loss is taken to be nil.

## 9 Subdivision 418-E—Issuing exploration credits

### 10 Table of sections

11	418-110	Issuing exploration credits
12	418-115	Restricting exploration credits to post 1 July 2014 equity interests
13	418-120	Exploration credits to be issued on a proportionate basis
14	418-125	Expiry of exploration credits
15	418-130	Notifying the Commissioner of issuing or expiry of exploration credits

### 16 418-110 Issuing exploration credits

- 17 (1) An entity that has created \*exploration credits for an income year  
18 may issue any of those exploration credits to \*members of the  
19 entity, in respect of the \*equity interests held by the members.
- 20 (2) The \*exploration credits are issued by giving each of the \*members  
21 a statement in the \*approved form.
- 22 (3) The issuing of \*exploration credits is of no effect unless:  
23 (a) the statements under subsection (2) are given to the  
24 \*members on or before the first 30 June after the day on  
25 which the modulation factor in respect of the income year is  
26 declared under section 418-90; and  
27 (b) the issuing of credits complies with section 418-120.

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## 1 418-115 Restricting exploration credits to post 1 July 2014 equity 2 interests

- 3 (1) An entity may, before it has issued any \*exploration credits for any  
4 income year, choose to restrict the issuing of exploration credits to  
5 issuing exploration credits in relation to \*equity interests that have  
6 come into existence on or after 1 July 2014.
- 7 (2) An entity that makes such a choice must notify the Commissioner  
8 accordingly, in the \*approved form, before the entity has issued  
9 any \*exploration credits for any income year.
- 10 (3) A choice under this section is irrevocable.

## 11 418-120 Exploration credits to be issued on a proportionate basis

- 12 (1) An entity issuing \*exploration credits for an income year must  
13 ensure that the total number of exploration credits issued to any  
14 \*member of the entity for the year, expressed as a percentage of the  
15 total number of all exploration credits issued to the members of the  
16 entity for the year, is the same as:
- 17 (a) if the entity has made a choice under section 418-115—the  
18 number of \*equity interests that have come into existence on  
19 or after 1 July 2014 and that the member holds in the entity,  
20 expressed as a percentage of the total number of such equity  
21 interests that all members of the entity hold in the entity; or
- 22 (b) otherwise—the total number of equity interests that the  
23 member holds in the entity, expressed as a percentage of the  
24 total number of equity interests that all members of the entity  
25 hold in the entity.
- 26 (2) For the purposes of this section, the number of \*equity interests  
27 that a \*member holds in the entity is taken to be the number that  
28 the member held on the day occurring 30 days before the  
29 \*exploration credits were issued.

## 30 418-125 Expiry of exploration credits

31 An \*exploration credit created by an entity for an income year  
32 expires if the entity does not issue the credit under this Subdivision  
33 on or before the first 30 June after the day on which the modulation  
34 factor in respect of the income year is declared under  
35 section 418-90.

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## 418-130 Notifying the Commissioner of issuing or expiry of exploration credits

- (1) An entity that has created \*exploration credits for an income year must notify the Commissioner of the issuing or expiry of the credits.
- (2) The notice must:
- (a) be in the \*approved form; and
  - (b) be given to the Commissioner on or before the due date:
    - (i) if the entity is an \*investment body for \*Part VA investments—for giving to the Commissioner an \*annual investment income report in respect of the \*financial year most closely corresponding to the income year; or
    - (ii) otherwise—for the entity to lodge its \*income tax return for the income year.

## Subdivision 418-F—Excess exploration credits

### Table of sections

418-150	Excess exploration credit tax
418-155	Due date for payment of excess exploration credit tax
418-160	General interest charge
418-165	Refunds of amounts overpaid
418-170	Record keeping
418-175	Determining an entity not to be a greenfields minerals explorer

### 418-150 Excess exploration credit tax

An entity is liable to pay \*excess exploration credit tax for an income year if the sum of the \*exploration credits it issues for the income year exceeds the entity's \*maximum exploration credit amount for the income year.

Note: The tax is imposed by the *Excess Exploration Credit Tax Act 2014*, and the amount of the tax is set out in that Act.

### 418-155 Due date for payment of excess exploration credit tax

An entity's \*excess exploration credit tax for an income year, as assessed under Schedule 1 to the *Taxation Administration Act 1953*, is due and payable at the end of 21 days after the



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1 Commissioner gives the entity notice of the assessment of the  
2 amount of excess exploration credit tax for the income year.

3 Note: For assessments of excess exploration credit tax, see Division 155 in  
4 Schedule 1 to the *Taxation Administration Act 1953*.

## 5 **418-160 General interest charge**

6 If:

- 7 (a) \*excess exploration credit tax payable by an entity remains  
8 unpaid after the time by which it is due and payable; and  
9 (b) the Commissioner has not allocated the unpaid amount to an  
10 \*RBA;  
11 the entity is liable to pay the \*general interest charge on the unpaid  
12 amount for each day in the period that:  
13 (c) starts at the beginning of the day on which the excess  
14 exploration credit tax was due to be paid; and  
15 (d) ends at the end of the last day on which, at the end of the day,  
16 any of the following remains unpaid:  
17 (i) the excess exploration credit tax;  
18 (ii) general interest charge on any of the excess exploration  
19 credit tax.

20 Note: The general interest charge is worked out under Part IIA of the  
21 *Taxation Administration Act 1953*.

## 22 **418-165 Refunds of amounts overpaid**

23 Section 172 of the *Income Tax Assessment Act 1936* applies for the  
24 purposes of this Division as if references in that section to tax  
25 included references to \*excess exploration credit tax.

## 26 **418-170 Record keeping**

27 Section 262A of the *Income Tax Assessment Act 1936* applies for  
28 the purposes of this Division as if:

- 29 (a) the reference in that section to a person carrying on a  
30 business were a reference to a \*corporate tax entity; and  
31 (b) the reference in paragraph (2)(a) of that section to the  
32 person's income and expenditure were a reference to the  
33 entity's liability to pay \*excess exploration credit tax; and  
34 (c) paragraph (5)(a) of that section were omitted.

# EXPOSURE DRAFT

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1 **418-175 Determining an entity not to be a greenfields minerals**  
2 **explorer**

- 3 (1) The Commissioner may determine, by written notice given to an  
4 entity that is, or has been, liable to pay \*excess exploration credit  
5 tax for an income year, that the entity is no longer to be treated as a  
6 \*greenfields minerals explorer.
- 7 (2) The determination takes effect from:  
8 (a) if, at the time the notice is given, the entity has not issued any  
9 \*exploration credits for the income year in which the notice is  
10 given—that income year; or  
11 (b) otherwise—the next income year.
- 12 (3) If the entity or a \*member of the entity is dissatisfied with a  
13 determination under subsection (1), the entity or member may  
14 object to it in the manner set out in Part IVC of the *Taxation*  
15 *Administration Act 1953*.

# EXPOSURE DRAFT

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## 1 **Part 2—Other amendments**

### 2 *Income Tax Assessment Act 1936*

#### 3 **3 Subsection 6(1)**

4 Insert:

5 *exploration development incentive tax offset* means a tax offset  
6 under Subdivision 418-B of the *Income Tax Assessment Act 1997*.

#### 7 **4 After paragraph 177C(1)(bb)**

8 Insert:

9 (bba) an exploration development incentive tax offset being  
10 allowable to the taxpayer where the whole or a part of that  
11 exploration development incentive tax offset would not have  
12 been allowable, or might reasonably be expected not to have  
13 been allowable, to the taxpayer if the scheme had not been  
14 entered into or carried out; or

#### 15 **5 After paragraph 177C(1)(f)**

16 Insert:

17 (fa) in a case where paragraph (bba) applies—the amount of the  
18 whole of the exploration development incentive tax offset or  
19 of the part of the exploration development incentive tax  
20 offset, as the case may be, referred to in that paragraph; and

#### 21 **6 At the end of subsection 177C(2)**

22 Add:

23 ; or (e) an exploration development incentive tax offset being  
24 allowable to the taxpayer the whole or a part of which would  
25 not have been, or might reasonably be expected not to have  
26 been, allowable to the taxpayer if the scheme had not been  
27 entered into or carried out, where:  
28 (i) the allowance of the exploration development incentive  
29 tax offset to the taxpayer is attributable to the making of  
30 a declaration, agreement, election, selection or choice,  
31 the giving of a notice or the exercise of an option by any  
32 person, being a declaration, agreement, election,  
33 selection, choice, notice or option expressly provided  
34 for by this Act; and

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# EXPOSURE DRAFT

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1 (ii) the scheme was not entered into or carried out by any  
2 person for the purpose of creating any circumstance or  
3 state of affairs the existence of which is necessary to  
4 enable the declaration, agreement, election, selection,  
5 choice, notice or option to be made, given or exercised,  
6 as the case may be.

## 7 **7 Subsection 177C(3)**

8 Omit “or (d)(i)”, substitute “, (d)(i) or (e)(i)”.

## 9 **8 At the end of paragraph 177C(3)(ca)**

10 Add “or”.

## 11 **9 After paragraph 177C(3)(ca)**

12 Insert:

13 (cb) the allowance of an exploration development incentive tax  
14 offset to a taxpayer;

## 15 **10 At the end of subsection 177C(3)**

16 Add:

17 ; or (h) the exploration development incentive tax offset would not  
18 have been allowable.

## 19 **11 After paragraph 177CB(1)(d)**

20 Insert:

21 (da) the whole or a part of an exploration development incentive  
22 tax offset not being allowable to the taxpayer;

## 23 **12 At the end of paragraph 177F(1)(d)**

24 Add “or”.

## 25 **13 After paragraph 177F(1)(d)**

26 Insert:

27 (e) in the case of a tax benefit that is referable to an exploration  
28 development incentive tax offset, or a part of an exploration  
29 development incentive tax offset, being allowable to the  
30 taxpayer—determine that the whole or a part of the  
31 exploration development incentive tax offset, or the part of  
32 the exploration development incentive tax offset, as the case  
33 may be, is not to be allowable to the taxpayer;

# EXPOSURE DRAFT

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1 **14 At the end of paragraph 177F(3)(d)**

2 Add “or”.

3 **15 After paragraph 177F(3)(d)**

4 Insert:

5 (e) if, in the opinion of the Commissioner:

6 (i) an amount would have been allowed, or would be  
7 allowable, to the relevant taxpayer as an exploration  
8 development incentive tax offset if the scheme had not  
9 been entered into or carried out, being an amount that  
10 was not allowed or would not, apart from this  
11 subsection, be allowable, as the case may be, as an  
12 exploration development incentive tax offset to the  
13 relevant taxpayer; and

14 (ii) it is fair and reasonable that the amount, or a part of the  
15 amount, should be allowable as an exploration  
16 development incentive tax offset to the relevant  
17 taxpayer;

18 determine that that amount or that part, as the case may be,  
19 should have been allowed or is allowable, as the case may be,  
20 as an exploration development incentive tax offset to the  
21 relevant taxpayer;

22 ***Income Tax Assessment Act 1997***

23 **16 Section 13-1 (after table item headed “Equine Workers  
24 Hardship Wage Supplement Payment”)**

25 Insert:

**exploration for minerals**

exploration development incentive ..... Subdivision 418-B

26 **17 At the end of section 36-25**

27 Add:

# EXPOSURE DRAFT

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*Tax losses of greenfields minerals explorers*

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Item	For the special rules about this situation...	See:
1.	A greenfields minerals explorer creates exploration credits.	Section 418-95

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## 18 At the end of Subdivision 197-A

Add:

### 197-42 Exclusion for exploration credits

This Division does not apply to the transferred amount if:

- (a) the company transferring the amount is a \*greenfields minerals explorer; and
- (b) the amount is transferred in connection with the creation of \*exploration credits.

## 19 Subsection 205-15(1) (at the end of the table)

Add:

- 7 a \*franking credit arises under subsection 418-50(1) in relation to an \*exploration credit the amount of the \*franking credit specified in subsection 418-50(2) at the time provided by subsection 418-50(3)

## 20 Subsection 219-15(2) (at the end of the table)

Add:

- 8 a \*franking credit arises under subsection 418-55(1) in relation to an \*exploration credit the amount of the \*franking credit specified in subsection 418-55(2) at the time provided by subsection 418-55(3)

## 21 Subparagraphs 418-80(2)(b)(ii) and (iii)

Repeal the subparagraphs, substitute:

- (ii) an area referred to in subsection 960-505(2); and

## 22 Subsection 995-1(1)

Insert:

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# EXPOSURE DRAFT

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1 *annual investment income report* means a report, relating to  
2 \*Part VA investments, that an entity is required to give to the  
3 Commissioner, in respect of a \*financial year, under the regulations  
4 made under the *Income Tax Assessment Act 1936*.

5 *excess exploration credit tax* means tax imposed by the *Excess*  
6 *Exploration Credit Tax Act 2014*.

7 *exploration credit* means an exploration credit created under  
8 Subdivision 418-D.

9 *greenfields minerals expenditure* has the meaning given by  
10 section 418-80.

11 *greenfields minerals explorer* has the meaning given by  
12 section 418-75.

13 *maximum exploration credit amount* has the meaning given by  
14 subsection 418-85(2).

15 **23 Subsection 995-1(1) (paragraph (a) of the definition of tax**  
16 **loss)**

17 After “section 415-15”, insert “or reduced under section 418-95”.

18 ***Taxation Administration Act 1953***

19 **24 Section 45-340 in Schedule 1 (at the end of paragraph (g)**  
20 **of step 1 of the method statement)**

21 Add “; or”.

22 **25 Section 45-340 in Schedule 1 (at the end of step 1 of the**  
23 **method statement)**

24 Add:

25 (h) Subdivision 418-B of the <i>Income Tax Assessment</i> 26 <i>Act 1997</i> (the exploration development incentive 27 tax offset).
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28 **26 Section 45-375 in Schedule 1 (at the end of paragraph (f)**  
29 **of step 1 of the method statement)**

30 Add “; or”.

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# EXPOSURE DRAFT

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1 **27 Section 45-375 in Schedule 1 (at the end of step 1 of the**  
2 **method statement)**

3 Add:

4 (g) Subdivision 418-B of the *Income Tax Assessment*  
5 *Act 1997* (the exploration development incentive  
6 tax offset).

7 **28 At the end of subsection 155-5(2) in Schedule 1**

8 Add:

9 ; (g) an amount of \*excess exploration credit tax for an income  
10 year.

11 **29 Subsection 284-80(1) in Schedule 1 (at the end of the**  
12 **table)**

13 Add:

5 You are liable to pay to the Commissioner an amount of \*excess exploration  
credit tax

14