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Dr. Alan Preston
Secretary
Review of Business Taxation
Department of Treasury
Parkes Place
CANBERRA ACT 2600

Dear Dr. Preston

"A PLATFORM FOR CONSULTATION"

Rio Tinto Group - Background

Rio Tinto is one of the world's largest mining groups, which operates large-scale, long-life mines in many countries. In very broad terms, around 40% of its assets and revenues are represented by its Australian operations. The risks and rewards derived from the Rio Tinto Group's Australian and overseas businesses have been pooled through a dual listed companies structure. The Australian-based company, Rio Tinto Limited, is listed on the Australian Stock Exchange and has over 38,000 Australian shareholders. While the Group has significant foreign ownership, Australia and Australians play a large part in its ownership, its management, its employment, and its operations.

Two of Rio Tinto's six major Product Groups - Comalco and Rio Tinto Iron Ore - are headquartered and predominantly located in Australia, while two of the major business units comprising Rio Tinto Energy - Pacific Coal and Rio Tinto Coal (NSW) - are located in Australia. In addition, much of the Group's technical development capability, its bulk shipping, project engineering and some significant treasury operations are located in Australia. The long term commitment of the Rio Tinto Group to Australia was demonstrated when during 1998 the Group increased its investment in Australia through the acquisition of an 80% stake in the Gordonstone coking coal mine ($230 million) and the purchase of an additional interest in Blair Athol ($66 million). In addition, the Boyne Island smelter expansion ($1 billion) operated and 59% owned by Comalco was commissioned in 1997 and Hamersley Iron's Yandicoogina iron ore mine ($550 million) was commissioned in 1998.

Australia will continue to play a significant role in the Rio Tinto Group's future. Australia has a highly developed resources sector and possesses numerous prospective mining regions. It has extensive experience of the mining industry, in mining issues and a history of being sensitive to and focussed upon the requirements for international competitiveness in that industry.

While tax is not the only factor to be considered in locational decision-making in the resource sector, it contributes significantly to the general investment environment and affects the international competitiveness of investment returns. Tax can have a particularly important impact on marginal investment decisions.

Rio Tinto – "Platform for Consultation" – Introduction

The deficiencies of the current Australian tax system have been thoroughly reviewed in the "Strong Foundation" Discussion Paper and the urgency of reform clearly identified. It is important that the proposals finally incorporated into any package of tax reform are coherent and workable. The objectives as set out include the creation of a framework providing stability and certainty for the future to enable economic decisions to be taken on their merits and to permit the Australian economy to develop in a tax environment which is internationally competitive.

Many of the options for tax reform outlined in the second Discussion Paper would impact upon the company and influence its view of Australia's relative attractiveness as a country in which to invest and do business.

The Government's desire to consult with the business community on tax issues is to be welcomed. With regard to the Consultation Paper, the size of the document, the range and complexity of the issues which it raises, and the interactions of one with another would all have justified making available further time to give them more detailed consideration. However, Rio Tinto acknowledges and accepts that only a relatively short period is available for public comment given that it is important that tax reform is introduced as soon as possible.

Rio Tinto is aware that many other industry and professional bodies are preparing comprehensive responses to the Consultation Paper and has had the opportunity to see drafts of a number of these. Many of the points raised in them are matters of concern or relevance to the group as well. In this letter, therefore, the company has confined itself to comment upon only those matters that are of special significance to it or where its worldwide experience may be of particular relevance. Given Rio Tinto's international business coverage and the significance of its Australian businesses in Australia's trade profile, Rio Tinto is uniquely well placed to comment on some of the key issues raised in the Consultation Paper.

Bearing this in mind, Rio Tinto has identified four aspects of the Consultation Paper on which it wishes to comment specifically:

1. The international competitiveness of the rate at which tax is charged and the base upon which it is imposed.
2. The tax treatment of distributed profits and its implications for shareholders, both domestic and international.
3. The existence of a number of specific tax impediments to economically rational commercial behaviour.
4. The need for compliance and simplification improvements.

Rio Tinto – "Platform for Consultation" – Specific Comments

1. An Internationally Competitive Company Tax System

1.1 Tax Rate

Australia will benefit enormously from adopting an internationally competitive company tax rate. **In Rio Tinto's view, a reduction in the general rate of company tax to 30% will send a very timely, positive signal to Australian and non-Australian companies intending to extend their direct investments in Australia in an increasingly global business environment.** This tax rate reduction is one of the Government's stated objectives. Inward investment has always been critical to economic prosperity in Australia. A headline company tax rate set to attract and underpin greater direct foreign investment will have a much needed impact upon Australia's balance of payments. It is a sensible means to reduce Australia's foreign debt and to ensure that the benefits of foreign investment are maximised.

While headline rates of tax do not necessarily provide a complete measure of tax cost to business, they are nevertheless an indicator of the tax burden ultimately borne. At present, of the 11 countries in which Rio Tinto has major operations, Australia stands in 11^{th} position by reference to the nominal rate of tax. If the company tax rate were to be reduced to 30 %, then Australia would stand in equal 5th position on the list.

1.2 Tax Base

Of course, **the relative attractiveness of a reduced company tax rate will depend very much upon the other components of the tax package.** By way of illustration (and with particular relevance to the Mining Industry), the period over which expenditure on capital assets can be written off for tax purposes also influences the competitiveness of Australia in seeking to attract project investment.

The Consultation Paper notes that in the Information Paper titled "An International Perspective" the Mining Industry is "favourably taxed in all of the [26] jurisdictions surveyed" Rio Tinto would dispute the judgement that these treatments are favourable. It would be more accurate to say that they demonstrate there is worldwide general acceptance of the particular needs of the Mining Industry. Further, it is a strong indication that they are a factor which should be taken into account when finalising the tax reform package for Australia as well.

Sound tax reform should take into account the business realities of expenditure and in this context the special circumstances of particular industries need to be considered. For example, within the Mining Industry:

- **Expenditure on exploration and prospecting is often unsuccessful. Accordingly, the immediate tax deductibility of such expenditure is appropriate** and properly reflects the riskiness of the expenditure.
- The research and development incentive has for some time been an important tax incentive bringing significant benefits to the Australian economy. Many productivity breakthroughs have resulted from projects supported by the incentive

and the capital intensive Mining Industry has become more efficient accordingly. However, the value of the incentive depends upon both the rate of deduction (currently 125%) and the corporate tax rate. **Any reduction in the corporate tax rate will have the effect of reducing the value of the research and development incentive.** At some point, the incentive effect of the extra research and development tax deduction becomes marginal.

- **Capital expenditure on mine development often involves significant non-plant items** such as land clearing, sinking of mine shafts and construction of access roads. **Without specific tax treatment** (which is generally available in other countries – refer to the "International Perspective" paper), **expenditure on these items would not otherwise be tax deductible.** This would have an adverse effect upon the relative profitability of Australian-based projects.

- The international competitiveness of the Mining Industry demands low cost production. One source of efficiency is the use of the latest technology and equipment. **Accelerated depreciation facilitates and encourages the regular updating of capital equipment.**

Further, and more generally, estimates of the life of plant and equipment based on physical characteristics alone often have little bearing on how a business actually uses those assets. Fixed schedules of physical lives of assets become out of date, being neither comprehensive nor current. **There is, therefore, a case, as indicated in the Consultation Paper, for allowing taxpayers either to select updated published asset lives or to self-assess their own depreciation rates for assets,** depending upon the applications of those assets in their particular businesses.

Rio Tinto welcomes the commitment in the Consultation Paper to allow tax deductions for the full range of business expenditure incurred to derive assessable income, including the tax deductibility of costs that are currently "blackholes", such as contributions to regional infrastructure, demolition costs and mine closure costs. **The preferred legislative approach to provide for tax deductibility is the use of a general deduction provision for "blackhole" expenditure.** If a statutory list of specifically identified categories is used, there is a risk that the list may not be sufficiently comprehensive and this would replicate many of the existing problems with the current system. Such a list would also require periodic updating.

1.3 Company Tax Rate v Accelerated Depreciation

A major consideration for the Review of Business Taxation is that its proposals must be revenue neutral. The Consultation Paper suggests that the cost to revenue of a reduction in the corporate tax rate to 30% could be substantially offset by the removal of accelerated depreciation. Accelerated rates of depreciation would be replaced by rates based upon an asset's effective life.

It is clear that the removal of accelerated depreciation would affect different industries differently. For example, capital-intensive industries (such as the mining and manufacturing industries) would be relatively worse off than non-capital-intensive industries (such as the financial services and tourism industries) through the removal of accelerated depreciation. Rio Tinto recognises the importance to the Mining Industry of accelerated depreciation.

Equally, such a proposal would also affect different companies within the same industry differently. For example, within the Mining Industry, mining companies with new or expanding mining operations will be more adversely affected than mining companies with profitable mature long life mining operations. Mining companies generating tax losses would receive no cash benefit from the reduction in the corporate tax rate. To such a company, any reduction in tax depreciation is only relevant to the extent to which it brings forward the time at which cash tax is paid.

For all new investments in any industry, NPV and payback period are important factors when evaluating the rate of return on proposed projects. Any change that adversely affects NPV will raise the hurdle for new developments, adding another barrier against entry into or expansion within Australia. The removal of accelerated tax depreciation, if this were one of the final outcomes of the review, would clearly tend to have an adverse impact on NPV and would undeniably influence major new capital investment decisions. It is impossible to predict the full extent of this. However, the effect on the level of new investment in Australia in the future would have to be monitored by the Government, bearing in mind that there will be many investment decisions where there is an ability to move the capital expenditure offshore.

These effects are significant and ideally it would be in Australian industry's best interest to achieve both the continuation of accelerated depreciation and the reduction in the corporate tax rate. However, it has to be accepted that this outcome is not realistic in the light of the revenue neutral requirement of the Review of Business Taxation proposals.

Rio Tinto believes the 30% corporate tax rate is a worthy objective even if it involves a corresponding reduction in accelerated depreciation.

Each sector of the Australian economy will be affected differently by the Tax Reform process. It will not be possible to achieve an outcome that is equally acceptable to all taxpayers. **The only feature common to all sectors is that ultimately all profits will be subject to tax. The only reform measure that will clearly be beneficial to all taxpayers in the long term is the reduction in the corporate tax rate. Rio Tinto's concern is that any corporate tax rate reduction would be insufficient. To provide any stimulus to investment it would have to do more than merely offset the costs of changes to tax depreciation.** The concept of "revenue neutrality" should take into account the increase in tax collections arising out of the expansion of the Australian economy which a more competitive tax system would encourage. **The most positive course of action would be an immediate reduction to the significantly lower corporate tax rate of 30%.**

2. The Tax Treatment of Distributed Profits

2.1 Full Franking

Reform of business taxation should have as one of its main objectives the encouragement of value adding activity based in Australia and investment undertaken by Australian companies. In an increasingly international commercial environment, **the consequences of overseas investment should not be disadvantageous to**

Australian companies given that a hostile regime may lead to their relocation outside Australia. Furthermore, in order to maximise the potential for inward investment into Australia, **foreign investors should not be penalised as a result of the way tax is levied in Australia**. The treatment of dividends is a fundamental part of the attractiveness of a tax regime from an investor's point of view and thus impinges directly on the national interest.

Notwithstanding the Government commitment to full franking (the taxing of all distributed profits at the company level) in its "A New Tax System" announcement of 13 August 1998, tax reform in this area must be assessed against international standards of dividend treatment. **The proposals relating to full franking contained in the Consultation Paper are unacceptable** from several points of view.

Currently, no further tax is payable by a company when it makes a dividend distribution from untaxed profits. This position is proposed to change and three options are considered in the Consultation Paper:

(1) Deferred Company Tax

(2) Resident Dividend Withholding Tax

(3) Inter-Entity Distributions Tax

As currently formulated, each has the potential to work against Australian-based companies with significant non-Australian income-producing assets and also against companies with a significant proportion of non-Australian shareholders.

Taking the Deferred Company Tax proposal for instance:

- It would impose a tax charge at 36% (at current rates) on unfranked dividends paid to non-resident shareholders rather than at the relevant dividend withholding tax rate (generally 15% or 30%).
- It would impose a tax charge at 36% (at current rates) on unfranked dividends paid to resident companies outside a 100% owned domestic group (assuming a consolidated tax regime). Such distributions are generally tax free under current dividend rebate arrangements.
- The imposition of a tax charge at the company level would adversely affect the company's reported after tax earnings with likely further consequences including a reduction in the company's market capitalisation and increased cost of capital. Further, accounting standards could require the creation of a tax provision in respect of retained earnings represented by untaxed profits with similar adverse consequences.
- There is no mechanism for crediting the tax paid against future or past tax liabilities of the paying company. A comparison with the complexities and commercial unworkability of the UK ACT scheme is drawn in the Consultation Paper. The UK system charged ACT on a company at the time of paying dividends but allowed that ACT to be deducted from the company tax in determining final Corporation Tax payable. Whatever the complexities may have

been, they did at least arise out of the recognition that ACT was an acceleration of tax for which an offset was generally appropriate. The Paper discusses the possibility of crediting Deferred Company Tax paid against mainstream company tax, but states that this would effectively lead to the reinstatement of tax preferences. However, the majority of tax preferences arise as a result of timing differences which will ultimately reverse. This reversal will generate additional tax payments, effectively cancelling the benefit of the tax preferences in any case. The potential for unjustified double taxation is clear and Rio Tinto can see no reason for not permitting an offset if the current proposals are implemented.

- It would eliminate, at the company level, the benefits and incentive of any tax concessions such as the 125% research and development deduction, as any company tax saved would be paid on distribution as Deferred Company Tax.

- Where a tax charge is suffered by a company on the payment of an unfranked dividend to a non-resident shareholder, the Consultation Paper asserts that the company tax / dividend withholding tax switch mechanism would “ensure maximum possibility of Australian tax being credited overseas”. In Rio Tinto’s view, there is considerable doubt that the non-resident would be entitled to a credit for the tax paid in its home jurisdiction.

- It would penalise any company that made distributions out of foreign taxed income. Foreign tax paid does not generate Australian franking credits (and there is some recognition of this in the Consultation Paper), so that Deferred Company Tax would be due when this income was distributed.

Some of these features are replicated in the two alternative systems. As presently described, no one option is to be preferred.

The Resident Dividend Withholding Tax proposal provides that a refund would occur where unfranked distributions paid between resident entities are subsequently passed to foreign investors. The current dividend withholding tax regime would then apply to the cash dividend plus any refund, ensuring that foreign investors were no worse off.

The Inter-Entity Distributions Tax proposal would operate similarly if it was combined with a refund of tax to foreign investors in like terms to the Resident Dividend Withholding Tax proposal.

Neither of the above proposals, however, fully resolves the problems caused to any Australian group with significant overseas income and this is a major factor, the importance of which Rio Tinto wishes to stress.

If full franking is regarded as inevitable, Rio Tinto’s position is that it should be in the context of a scheme which:

- **provides for a credit for additional tax paid against future tax liabilities, together with some mechanism for carry back to prior years;**

- **ensures that additional tax paid on the unfranked element of the distribution is creditable against any tax due in the country of residence of the recipient;**

- **does not impose a tax penalty on a company (or its shareholders) which receives significant amounts of foreign taxed income; and**

- **ensures that dividends remitted offshore are subject to a rate of tax no higher than that provided for in the relevant tax treaty.**

2.2 <u>Foreign Dividend Account / Withholding Taxes</u>

The Consultation Paper notes that companies resident in Australia that have both a significant proportion of non-resident shareholders and non-portfolio investments in foreign countries are adversely affected by the current tax treatment of foreign (or conduit) income distributed to foreign shareholders.

The Paper recognises that there is a case for such companies to be entitled to stream such foreign income directly to non-resident shareholders without suffering any Australian tax. There is little justification for Australia to tax genuine conduit income.

An expanded Foreign Dividend Account regime (the "Foreign Income Account") is identified as a way of addressing the flow-through of foreign income to non-resident shareholders. However, this is only a partial solution to the problem of the high tax cost for foreign shareholders in Australian multinational companies receiving significant non-Australian income. **Rio Tinto believes that the flow of foreign taxed profits to foreign shareholders should occur without the imposition of any Australian tax cost. The streaming of foreign income directly to foreign shareholders should be expressly permitted.**

If this preferred approach is not adopted, at the very least, **the current Foreign Dividend Account regime should be broadened to include all foreign income and its operation extended to provide improved treatment for foreign conduit income.**

At present, the Foreign Dividend Account scheme does not permit the tax efficient streaming of foreign income earned by Australian companies to their non-resident shareholders. In particular, this arises where the non-resident shareholders hold interests in an Australian based company that is part of a less than 100% owned Australian group earning foreign income. **The requirement for 100% group ownership of companies to permit foreign dividend account credits to flow through resident groups should be abolished.** Such a requirement is overly restrictive and severely limits the benefits of the existing Foreign Dividend Account regime. A minimum 10% level of ownership between resident companies should be sufficient.

Further, the current Foreign Dividend Account regime requires that credits must be attached to dividends paid to all shareholders (not merely non-Australian shareholders) with the effect that credits are wasted to the extent that they are paid to Australian resident shareholders. Such an approach leads to significant undermining of the efficacy of the regime. Ideally, **Foreign Dividend Account credits should only attach to dividends paid to non-residents.**

In addition, **Rio Tinto supports the position that all foreign income derived by a company should be credited to its Foreign Income Account,** not merely the proportion of foreign income related to the level of foreign ownership. The requirement to declare Foreign Income Account credits on unfranked dividends paid to all shareholders, under current arrangements, means that foreign shareholders only receive their proportionate entitlement.

As a separate issue, **Rio Tinto supports the proposal to allow imputation credits for withholding taxes paid on foreign dividends derived by a resident company.**

3 Tax Impediments to Commercial Behaviour

3.1 Corporate Mergers and Capital Gains Tax

Currently, Australian capital gains tax is payable on the disposal of shares as a result of a share for share exchange arising from a corporate merger or acquisition. The acquisition by one company of another company, where the consideration is in the form of an exchange of shares in the target company for shares in the acquiring company, will result in the disposal of shares by the shareholder in the target company. The potential imposition of capital gains tax in such a case can act as an impediment to corporate merger and takeover activity in Australia with a resultant loss in efficiency and productivity gains. In this regard, Australia is out of step with many overseas countries that provide some form of rollover relief on share for share exchanges (eg Canada, Ireland, Japan, Sweden, United Kingdom and United States of America).

The reform proposal contemplates the introduction of a capital gains tax roll-over or deferral for acquisitions of listed companies by other listed companies.

While **such a change would be beneficial and is supported by Rio Tinto**, it would be commercially sensible that the proposal should also:

- apply to mergers and acquisitions involving non-listed companies;
- apply to mergers and acquisitions involving non-Australian companies;
- apply to transactions where the level of ultimate ownership of the target company is significantly less than 100%;
- permit the capital gains tax roll-over to be optional; and
- apply to the deconsolidation of a company.

If a capital gains tax roll-over proposal is to be adopted, then, regardless of the main legislative timetable, it should be made effective from the date of announcement in order to avoid companies postponing planned merger and acquisition activity until the measure is in place. A failure to do this could result in a complete moratorium on all merger and acquisition activity in Australia.

3.2 <u>"Thin Capitalisation"</u>

Two reform options are put forward for consideration in the Consultation Paper.

The first reform option would allow the gearing of Australian operations up to the gearing level of the word-wide group. If the world-wide gearing level was exceeded, an arm's length test could then be relied on to determine an acceptable level of gearing. Under the arm's length test, the gearing level of the Australian operations is measured against what gearing could be expected for a comparable independent operation. No details are given as to how this test would be performed, but it could, perhaps, require reference to the gearing of similar sized companies in the same industry or reference to rating agencies' criteria. **The world-wide gearing test is not widely used by other countries** (New Zealand and the United States being exceptions) and Rio Tinto's experience is that where it is used, there are practical problems in collecting and monitoring the data to perform such a calculation. As a result, **Rio Tinto would not advocate such a test.**

The second reform option would set a fixed gearing ratio or "safe harbour" (as is current practice). If that level were exceeded, gearing would be allowed up to the group's worldwide gearing ratio but importantly with the retention of the arm's length test, as for the first option.

Rio Tinto strongly supports the fixed gearing ratio or "safe harbour" approach with the incorporation of an arm's length test reflecting the Australian group's ability to borrow where this is exceeded.

There are a number of other specific points in the area of thin capitalisation not canvassed in the Consultation Paper that require consideration:

- If the thin capitalisation rules are expanded to include all third party debt, **it is essential that the threshold for foreign control, currently 15 per cent, be increased substantially, to more than 50%.** If not, the thin capitalisation rules may impose restrictions on the gearing levels of Australian companies with only limited foreign ownership.

- If the rules are expanded to include all third party debt, **deductibility of the interest on the "excess" third party debt should be deferred to a period when the test is passed rather than disallowed absolutely.** This is because the interest paid to third parties cannot be characterised as a hidden distribution of profits. **As a transitional measure, any existing third party financing arrangements should be excluded from the immediate application of the rules.**

- **The existing thin capitalisation provisions contain an anomaly that should be rectified as part of any reform. The current definition of "foreign equity" does not allow the tracing of foreign equity through interposed, non-wholly owned Australian companies**, although "foreign debt" can be traced through. Only equity in the first onshore Australian resident company is taken into account for purposes of measuring foreign equity. Where the first resident company owns less than 100% of the shares in a second resident company, there can be no foreign equity in that second company for these purposes and, therefore, any foreign debt of the second company will be subject to the thin capitalisation rules.

This is particularly harsh under current rules where "foreign debt" can include third party debt guaranteed by the foreign controller (as currently defined). This situation would be made worse where, under the proposals being considered, "foreign debt" would include all third party debt.

3.3 Deductibility of Interest for Offshore Investments

In Rio Tinto's view, the Consultation Paper has not made out a case for amending the existing rules regarding the deductibility of interest for offshore investments. If anything, the acknowledged features of the current and likely future tax regimes suggest that the existing rules operate appropriately and will be strengthened by any move to a reduced company tax rate, full franking and a consolidated tax return regime. The Consolidation Paper correctly notes that Australia's dividend imputation system provides an incentive for company tax to be paid in Australia rather than overseas and any interest expense disproportionately incurred in Australia is for broader commercial reasons.

In this context, **there is no merit in introducing additional interest deduction requirements alongside the existing tracing rules.** The extra complexity and compliance obligations of such a proposal are unwarranted.

3.4 Indirect Transfers of Assets and Capital Gains Tax

Rio Tinto does not support the proposal to impose capital gains tax on gains arising from the indirect transfer of Australian assets by non-residents. Such an approach would reduce Australia's attractiveness to inward investment and therefore reduce Australia's international competitiveness. It would potentially result in the same gain on disposal being subject to tax in Australia as well as the non-resident's home jurisdiction, without any credit for Australian tax. Such double taxation appears contrary to the underlying principles of the Review of Business Taxation. The proposal may even visualise a tax liability being imposed on an entity that has not received the proceeds from the sale of the interest in the underlying Australian assets.

At least for double tax treaty countries, arguments based on source of profits, rights of countries to impose tax and extraterritoriality would most likely prevent Australia having any taxing jurisdiction in such a case. The practical difficulties in identifying and quantifying any relevant capital gain on the indirect disposal of Australian assets by non-residents suggest that such an approach would be unworkable.

Nevertheless, because it would represent a radical change from Australia's current tax practice, should the taxing of indirect asset transfers by non-residents be adopted, it should only apply on a prospective basis to indirect interests in Australian assets acquired by non-residents after the date of Royal Assent of the relevant amending legislation.

4 Compliance and Simplification Issues

4.1 Consolidation

The Consultation Paper includes a proposal for a consolidated tax return regime. **On the basis of Rio Tinto's experience of consolidated tax regimes around the world, it is highly unlikely that the suggested reductions in compliance costs will be realised and this is not a persuasive factor to support the introduction of any such system.** Compliance is unfortunately an ever more costly burden worldwide, regardless of the system. Ideally, a consolidated tax return regime would be optional with the current tax group transfer provisions remaining. The Consultation Paper however indicates that other factors may also be relevant in any decision to introduce consolidation, such as an apparent need to address a number of perceived abuses of the tax system.

If a consolidated tax return regime is introduced, it must equitably provide for the carry forward tax losses of wholly owned companies. In particular, the scheme must deal with tax losses that exist at the time of commencement, as well as any tax losses of companies that are acquired after the consolidated group is formed. Six options are proposed in the Consultation Paper to bring carry-forward tax losses into a consolidated group. No option provides for all existing tax losses to be available to the consolidated entity.

For losses which are in existence at the consolidation regime's commencement date, **Rio Tinto's position is that Option 1 in the Paper should be adopted as a transitional measure, on the basis that it provides the most equitable treatment of brought forward tax losses. For losses within newly acquired entities brought into an existing consolidated group** after the scheme has commenced, either Option 5 or Option 6 could be adopted but **Rio Tinto's preference would be for Option 5**.

The removal of the current grouping provisions is proposed for non-consolidating companies. Any corporate group which elected not to consolidate, perhaps because doing so would preclude the use of significant brought forward tax losses, would in consequence be severely penalised.

The Consultation Paper proposes the consolidation of company groups for tax purposes as promoting simplification. However, under the current proposals, **groups of companies will have different consolidation thresholds for different taxes,** the most obvious being 100% for Corporate Tax and 90% for Goods and Services Tax. It is difficult to see why these thresholds should not be identical for all taxes. There can be no merit in permitting the benefits of grouping for one tax while precluding it in other cases. **Harmonisation is clearly necessary.**

4.2 Transitional Measures

The introduction of a consolidated tax return regime will be a complex and onerous compliance task for all large corporate groups. It appears to be the intention that this should be implemented by 1 July 2000. Generally a 1 July 2000 commencement date would mean that early balancing companies (with a substituted year end of 31 December in lieu of the following 30 June) would have an effective start date of 1

January 2000. 1 July 2000 is already the proposed date for the commencement of the GST and any further major systems changes would be extremely onerous. **Rio Tinto therefore strongly advocates the deferment of the consolidated tax return regime to allow for a more orderly and measured implementation process to be undertaken.**

Conclusion

Rio Tinto fully supports the process of reform initiated last year by the Government with the announcement of "A New Tax System" and which has since been carried forward through the Review of Business Taxation. The need for reform has been apparent for some time and Rio Tinto believes that the Ralph Review presents an ideal opportunity to create a system which will ensure that Australia's tax environment is one which is internationally competitive and will encourage and promote new investments. The opportunity for Rio Tinto to participate in the review process through consultation and representation is greatly welcomed. It is desirable that this should continue into the future, even after the completion of the work of the Review Committee.

In this document, Rio Tinto has confined itself to a discussion of those matters on which it believes that it is particularly qualified to comment. The end product of the reform process will be a package of measures, and these measures will have to be judged on that basis. It will be the cohesiveness and integrity of the whole package that will determine whether or not it is a success, judged by reference to the stated objectives. The various elements of tax rate, tax base, full franking, entity taxation and so on, which form the core of the proposals contained in "A Platform for Consultation" all interrelate and no single aspect of the proposals can be considered entirely in isolation.

Finally, it is Rio Tinto's hope that in finalising the recommendations of the Committee sight will not be lost of two of the Review's primary aims which were, first, to improve simplicity and transparency of the tax system and, secondly, to reduce the costs of compliance for taxpayers. Many of the proposals contained in the Consultative Paper have exactly the contrary effect.

Should you wish to discuss any matters raised in this submission please do not hesitate to contact either myself or Adrian Wakefield (Vice President, International Taxation) whose contact details are attached.

Yours faithfully

Mr Barry Cusack
Managing Director
Rio Tinto – Australia