

EXPOSURE DRAFT

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Income Tax Assessment Act 1997

Income Tax Assessment (1997 Act) Amendment (Critical Minerals) Regulations 2025

Section 909-1 of the *Income Tax Assessment Act 1997* (“Act”) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Division 419 of the Act provides for a Critical Minerals Production Tax Incentive (“CMPTI”) - a refundable tax offset for companies that incur expenditure in carrying on CMPTI processing activities in relation to certain critical minerals. Subsection 419-20(1) of the Act defines what a CMPTI processing activity is for the purposes of the offset and states the regulations may further prescribe what constitutes a CMPTI processing activity.

The purpose of the *Income Tax Assessment (1997 Act) Amendment (Critical Minerals) Regulations 2025* (“Regulations”) is to prescribe certain critical minerals processing activities that are intended to be eligible for the CMPTI but would not meet the general test set out in the primary law.

In the 2024-25 Budget, the Government announced its \$22.7 billion Future Made in Australia Package. Part of this package included a National Interest Framework to guide targeted public investment into priority industries and sectors. The processing of critical minerals was identified as a priority sector under the Economic Resilience and Security stream of the National Interest Framework.

From this and the *Critical Minerals Strategy 2023-2030*, the Government announced that it would introduce a CMPTI. The *Future Made in Australia (Production Tax Credits and Other Measures) Act 2025* introduced the CMPTI.

The relevant critical minerals for the purpose of the CMPTI are listed in section 419-15 of the Act. The general definition of CMPTI processing activities is defined in paragraph 419-20(1)(a) of the Act as processing activities carried on at one or more facilities in Australia that involve substantially transforming a feedstock that contains a critical mineral through extractive metallurgical processing into a purer or more refined form of the critical mineral that is chemically distinct from the feedstock.

Given some of the processes intended to be CMPTI processing activities may not be within the general definition, paragraph 419-20(1)(b) of the Act allows regulations to prescribe additional processing activities that relate to one or more critical minerals where the substantial purpose of those prescribed activities is to achieve an outcome also prescribed in regulations.

These regulations prescribe processing activities and outcomes to allow the processing activities of identified critical minerals to be deemed eligible CMPTI processing activities. The identified processing activities for these regulations relate to the processing of:

EXPOSURE DRAFT

- High Purity Alumina
- Graphite; and
- Critical mineral-containing precursor cathode active material.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. They are subject to disallowance and sunseting under that Act.

The Regulations commence on the day after the regulations are registered on the Federal Register of Legislation. The CMPTI applies to expenditure incurred in income years in relation to processing activities (including as prescribed in the Regulations) starting on or after 1 July 2027 and before 1 July 2040.

Details of the Regulations are set out in Attachment A.

Details of the *Income Tax Assessment (1997 Act) Amendment (Critical Minerals) Regulations 2025*

Section 1 – Name

This section provides that the name of the regulations is the *Income Tax Assessment (1997 Act) Amendment (Critical Minerals) Regulations 2025* (“Regulations”).

Section 2 – Commencement

Schedule 1 to the Regulations commences on the day after the regulations are registered on the Federal Register of Legislation.

Section 3 – Authority

The Regulations are made under the *Income Tax Assessment Act 1997* (“Act”).

Section 4 – Schedule

This section provides that each instrument specified in the Schedules to this instrument is 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.

Item 1

This item inserts a new Division 419 at the end of Part 3-45 of the *Income Tax Assessment (1997 Act) Regulations 2021* (“Principal Regulations”). This new Division contains all of the substantive amendments.

General background

A company’s CMPTI offset for an income year is equal to 10% of its eligible CMPTI expenditure in that income year. Generally, a company incurs CMPTI expenditure where it carries on a registered CMPTI processing activity. The general definition of a CMPTI processing activity is in paragraph 419-20(1)(a) of the Act and states a CMPTI processing activity must involve substantial transformation of a feedstock that contains a critical mineral, through extractive metallurgical processing into a purer or more refined form of the critical mineral that is chemically distinct from the feedstock.

Paragraph 419-20(1)(b) of the Act states that regulations can be made prescribing activities, the substantial purpose of which is to produce prescribed outcomes for the purposes of including those activities as CMPTI processing activities. Specifically, the paragraph provides that an activity carried on at one or more facilities in Australia is a CMPTI processing activity if:

- It relates to one or more critical minerals, as defined by section 419-15 (paragraph (i));
- It is of a kind prescribed by the regulations (paragraph (ii));

EXPOSURE DRAFT

- It produces an outcome of a kind prescribed by the regulations (paragraph (iii)); and
- A substantial purpose for carrying on the activity is to achieve the above outcome (subsection 419-20(1)).

Section 419-20.01 – high purity alumina

The Act identifies high purity alumina (HPA) as a critical mineral in paragraph 419-15(1)(l). However, the production process for HPA does not meet the requirements under the general definition of a CMPTI processing activity. This is due to the composition of the feedstock used in HPA production, which does not contain any identified critical minerals as required by the general definition. As HPA is considered an important part of the *Critical Minerals Strategy 2023-2030*, the Regulations prescribe new processing activities which, if the requirements are satisfied, will be CMPTI processing activity.

Item 1 inserts a new section 419-20.01 into the Principal Regulations prescribing, with specific requirements, a HPA production activity as a CMPTI processing activity in accordance with paragraph 419-20(1)(b) of the Act.

Subsection 419-20.01(1) defines the kinds of HPA processing activities that constitute a CMPTI processing activity. This definition, instead of requiring a feedstock containing a critical mineral as in the general definition, instead specifies a requirement that feedstock contains the element aluminium. The effect of this is that the processing of HPA can be prescribed to be a kind of processing activity for the purposes of the CMPTI, subject to meeting other activity and outcome requirements.

Paragraphs 419-20.01(1)(b) and (c) mirror existing negative limbs found in paragraphs 419-20(2)(b) and (c) of the Act by expressly excluding beneficiation or manufacturing for HPA production as a CMPTI processing activity.

Subsection 419-20.01(2) prescribes the related outcome of the above-mentioned processing activity for the purposes of the CMPTI, that HPA be produced with a minimum purity of 99.99 per cent.

Only expenditure incurred carrying out the prescribed activity for the substantial purpose of achieving this prescribed outcome will be eligible to be counted towards the CMPTI offset.

Section 419-20.02 – graphite

The Act identifies graphite as a critical mineral at paragraph 419-15(1)(j) of the Act, however, the production process for graphite does not meet the requirements under the general definition of CMPTI processing activity. Unlike most other critical minerals, graphite does not require a chemical transformation of the naturally occurring mineral form to become a useful material.

Instead, graphite processing may involve a physical rather than a chemical change which uses physical processing techniques, such as micronisation and spheronisation. Extractive metallurgical processing is not used to extract graphite as graphite is not a metal, however graphite processing may involve chemical or thermal purification to extract metal and silicate impurities from the graphite concentrate to increase the total graphitic carbon content of the graphite. Additionally, the requirement of the product of processing being

EXPOSURE DRAFT

chemically distinct from the feedstock is not satisfied because, while total graphitic content is increased in processing, the resulting output may not be chemically distinct from the initial feedstock. As graphite is considered an important part of the *Critical Minerals Strategy 2023-2030* the Regulations prescribe additional processing activities which, if the requirements are satisfied, will be CMPTI processing activities.

Item 1 inserts a new section 419-20.02 into the Principal Regulations providing requirements for graphite production activity to be prescribed as a CMPTI processing activity in accordance with paragraph 419-20(b) of the Act.

Subsection 419-20.02(1) defines the kinds of graphite processing activities that constitute a CMPTI processing activity. This definition, instead of requiring using metallurgical processes as in the general definition, requires:

- substantial transformation of a feedstock containing graphite by using chemical or thermal purification;
- reducing the size of the particles of graphite in a feedstock (otherwise known as “micronisation”); or
- shaping the particles of graphite in a feedstock (otherwise known as “spheronisation”).

The effect of the new provisions allows the processing of graphite to be a CMPTI processing activity, subject to meeting the prescribed requirements.

The closing words to paragraph 419-20.02(1) mirrors existing negative limbs found in paragraphs 419-20(2)(b) and (c) of the Act by expressly excluding beneficiation or manufacturing for graphite production as a CMPTI eligible processing activity.

Subsection 419-20.02(2) prescribes the related outcomes of the above-mentioned processing activities for the purposes of the CMPTI.

- If the feedstock containing graphite has undergone substantial transformation by using chemical or thermal purification, the prescribed outcome is that the total graphitic content of the feedstock is increased;
- In relation to micronisation, the prescribed outcome is that the particles have a substantially more uniform size;
- In relation to spheronisation, the prescribed outcome is that the particles have a substantially more spherical shape.

It is intended that the processes and outcomes with respect to micronisation and spheronisation align with industry practice, ensuring the activities of micronisation and spheronisation are CMPTI processing activities. Milling covers a broad category of particle size reduction processes and is not intended to be captured by the kinds of graphite processing activities prescribed at 419-20.02(1)(b). Micronisation is a subset within the milling category and is the only form of milling that is captured by the kinds of graphite processing activities prescribed at 419-20.02(1)(b). Compared to other forms of milling, micronisation has more control over uniformity in particle size and utilises different mechanisms and hence different mill types to reduce the particle size.

EXPOSURE DRAFT

Only expenditure incurred carrying out the prescribed activity for the substantial purpose of achieving this prescribed outcome will be eligible to be counted towards the CMPTI offset.

Section 419-20.03 – precursor cathode active material

The primary law does not identify precursor cathode active material (“pCAM”) as a critical mineral, however, multiple constituents of both the feedstock and output of pCAM are critical minerals. pCAM production processes do not meet the requirements under the general definition of CMPTI processing activity. While multiple critical minerals are incorporated, the output cannot be termed purer or more refined. pCAM production can be considered the last step of critical mineral processing for critical minerals such as nickel, cobalt and manganese for the manufacture of lithium-ion batteries, a key component of the Future Made in Australia Package. The Regulations prescribes an additional processing activity in relation to pCAM which, if the requirements are satisfied, will be a CMPTI processing activity.

Item 1 inserts a new section 419-20.03 into the Principal Regulations providing requirements for pCAM production to be a CMPTI processing activity in accordance with paragraph 419-20(1)(b) of the Act.

Subsection 419-20.03(1) defines the kinds of pCAM processing activities that constitute a CMPTI processing activity. This definition, instead of requiring using metallurgical processes, requires substantial transformation of a feedstock containing one or more critical minerals into a chemically distinct output. The effect of new provisions allows the processing of pCAM to be prescribed as a CMPTI processing, subject to meeting other activity and outcome requirements.

Paragraphs 419-20.03(1)(b) and (c) mirror existing negative limbs found in paragraphs 419-20(2)(b) and (c) of the Act, expressly excluding beneficiation and manufacturing for pCAM production as a CMPTI processing activity. The addition of lithium hydroxide and kilning to produce CAM is where manufacturing commences.

Subsection 419-20.03(2) prescribes the related outcomes that the pCAMs produced contain at least one critical mineral and be suitable for use in the manufacturing of cathode active material for lithium-ion batteries. Only expenditure incurred carrying out the prescribed activity for the substantial purpose of achieving this prescribed outcome will be eligible to be counted towards the CMPTI offset.