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A Guide to the

Minerals Resource Rent Tax

23 November 2011

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Introduction

The Minerals Resource Rent Tax (MRRT) is an amended form of the proposed Resources Super Profits Tax, which was first announced by the Rudd Government on 2 May 2010 as part of a suite of reform measures in response to the Henry Tax Review. It became the Minerals Resource Rent Tax (MRRT) on 2 July 2010 following the Government's consultations with key mining companies that resulted in a 'breakthrough agreement' with the mining industry. The Agreement included a number of amendments to the original reform proposal.

Rationale for Charging for Australia's Non-Renewable Resources

Taken from the MRRT Exposure Draft Explanatory Material

- Australia has a large, high-quality non-renewable resource base.

- The rights to the majority of this resource base are vested in the Crown.

- The fact that these resources are non-renewable allows their exploitation to generate "above normal profit"[1] or economic rent.

- There are two main types of resource taxes: royalties (as typically charged by Australian state governments) and resource rent taxes.
    - Royalties do not take into account the profitability of a mining operation and as such will still tax mining operations when no economic rent is present, and will only recover a small portion of profits when rents are high.
        - The Australia's Future Tax System (AFTS) Review found the royalty regimes currently applied by States and Territories in Australia to be some of the most distorting taxes in the country.
    - Resource rent taxes are profit-based, cash flow taxes. A resource rent tax collects a percentage of the resource project's economic rent.

- Types of resource rent taxes:

    - The Petroleum Resource Rent Tax (PRRT) is an example of a Garnaut-Clunies Ross resource rent tax (named after the Australian Economists Ross Garnaut and Anthony Clunies Ross).
    - The MRRT is also based on this model.
    - The Garnaut-Clunies Ross resource rent tax is a resource rent tax model that attempts to allow the government to effectively share in the profits and costs of the mining

[1]*Exposure Draft – Minerals Resource Rent Tax, Explanatory Material,* http://www.treasury.gov.au/documents/2157/PDF/MMRT_exposure_draft.pdf

operation in proportion to the tax rate. The Garnaut-Clunies Ross resource rent tax is levied on the profits of a project but there is no refund when the cash flow is negative or the taxpayer is making a loss. Instead, losses are carried forward and 'uplifted' by an interest rate, so that they can be used as a deduction against positive cash flows in later years.

- The uplift rate preserves the value of the mining operation's losses because they do not get an immediate refund for the tax value of the government's contribution to the mining project. The uplift rate also includes a premium to compensate for the risk that the taxpayer may never get to use its losses.

Quick Summary of the MRRT and PRRT

Outline of the MRRT

- Under the MRRT, the government taxes mining profits and allows mining operations to carry forward and uplift losses with interest for use in later years.

- As the MRRT taxes profits from minerals that are commonly subject to state and territory royalties, it provides a credit for royalties.

- Iron ore and coal will be subject to the new profits-based tax at a rate of 30 per cent.

- The MRRT also applies to profits from gas extracted as a necessary incident of coal mining and gas produced by the *in situ* combustion of coal.

- Other commodities will not be included, so the number of affected companies will be around 320.

- MRRT assessable profits are calculated on the value of the commodity, determined at its first saleable form (at mine gate), less all costs to that point.

- Projects will be entitled to a 25 per cent extraction allowance that reduces taxable profits subject to the MRRT. This allowance recognises the contribution of the miner's expertise to profits at the mine gate.

- Small miners with resource profits below $75 million per annum will not have an MRRT liability, with the tax fully implemented when profits reach $125 million per annum. (N.B. See Outline of Additional Measures below.)

- Miners may elect to use the book or market value as the starting base for project assets, with depreciation accelerated over 5 years when book value, excluding mining rights, is used; or effective life (up to 25 years) when market value at 1 May 2010, including mining rights, is used. All post 1 May 2010 capital expenditure will be added to the starting base.

- A book value starting base will be uplifted with the long term bond rate plus 7 per cent. However, a market value starting base will not be uplifted.

- Investment post 1 July 2012 will be able to be written off immediately, rather than depreciated over a number of years. This allows mining projects to access the deductions immediately, and means a project will not pay any MRRT until it has made enough profit to pay off its up front investment.

- The deductibility of expenditure under MRRT will be broadly based on the categories used in the PRRT regime.

- MRRT losses will be transferable to other iron ore and coal projects in Australia. This supports mine development because it means a company can use the deductions that flow from investments in the construction phase of a project to offset the MRRT liability from another of its projects that is in the production phase.

- Unutilised MRRT losses will be carried forward at the government long term bond rate plus 7 per cent.

- Unused credits for royalties paid will be uplifted at the government long term bond rate plus 7 per cent, as per other expenses. Unutilised royalty credits will not be transferrable or refundable.

Outline of the Petroleum Resource Rent Tax Arrangements

- The Petroleum Resource Rent Tax (PRRT) regime, which currently only applies to offshore petroleum projects will be extended to cover all oil, gas and coal seam methane projects, onshore and offshore Australia.

- The PRRT will apply at a rate of 40 per cent.

    - Companies may elect to use market value as the starting base for project assets, including oil and gas rights.

    - All state and federal resource taxes will be creditable against current and future PRRT liabilities from a project.

- The standard features of the current PRRT will otherwise apply, including the range of uplift allowances for unutilised losses and capital write-offs; immediate expensing for expenditure and limited transfer of the tax value of losses.

Outline of additional measures

On 21 November 2011, Prime Minister Gillard announced additional measures that would be put in place in parallel with the implementation of the MRRT. These included:

- $150 million to establish a new Independent Expert Scientific Committee. The Committee will advise on coal seam gas and large coal mining approvals. It will also oversee research on the impacts on water resources from coal seam gas and large coal mining projects, and commission and fund water resource assessments for priority regions. The Committee will be required to publicly disclose its advice to ensure local communities have all the best information available to them.

- A new National Partnership Agreement with the states through COAG, compelling the Commonwealth and states to take into account the advice of the Committee. $50 million in incentive payments will be provided to the states to deliver the National Partnership.
- An increase in the threshold at which small miners will incur an MRRT liability from $50 million per annum to $75 million per annum, with the threshold at which the tax is fully levied rising from $100 million per annum to $125 million per annum.

Resource Tax Consultation Panel

In 2010, the Government established a Policy Transition Group (PTG) led by the Minister for Resources, Energy and Tourism, the Hon. Martin Ferguson MP AM and Mr. Don Argus AC to consult with industry and advise the Government on the implementation of the new MRRT and PRRT arrangements.

The detailed design of the MRRT is based on the recommendations of the PTG. The PTG consulted extensively across Australia on the new resource tax arrangements. The Government accepted all 98 of the PTG's recommendations on 24 March 2011.

Progress

The following indicative timeline was developed to achieve the 1 July 2012 implementation date:

- the improved resource taxation arrangements and its key elements, a new MRRT and the extension of PRRT, were announced on 2 July 2010;
- the Policy Transition Group (PTG) was established to oversee the development of the detailed design parameters and implementation;
- on 24 March 2011, the Government accepted all recommendations of the PTG;
- the Government released the *Minerals Resource Rent Tax Bill 2011 - Exposure Draft Bill* on Friday, 10 June 2011 for public comment;
- the *Exposure Draft– Petroleum Resource Rent Tax Bill 2011* was released on Friday, 26 August 2011. Consultation closed on 29 September 2011 and submissions have been made available on the Treasury website;
- the *Second Exposure Draft Legislation* was released on 18 September 2011. Consultation closed on 5 October 2011 and submissions have been made available on the Treasury website;
- legislation for the MRRT and the PRRT was introduced into the House of Representatives on 2 November 2011:
    1. Minerals Resource Rent Tax Bill 2011
    2. Minerals Resource Rent Tax (Consequential Amendments and Transitional Provisions) Bill 2011
    3. Minerals Resource Rent Tax (Imposition—Customs) Bill 2011
    4. Minerals Resource Rent Tax (Imposition—Excise) Bill 2011

5. Minerals Resource Rent Tax (Imposition—General) Bill 2011
6. Petroleum Resource Rent Tax Assessment Amendment Bill 2011
7. Petroleum Resource Rent Tax (Imposition—Customs) Bill 2011
8. Petroleum Resource Rent Tax (Imposition—Excise) Bill 2011
9. Petroleum Resource Rent Tax (Imposition—General) Bill 2011

- the bills were referred to the House Economics Committee for inquiry on 3 November 2011. Submissions have been made available on the Committee's website, along with the report, published on 21 November 2011.
- the bills were passed by the House of Representatives on 23 November 2011, and will be debated by the Senate in early 2012.

Background – the Henry Tax Review

The Government announced its original Resources Super Profits Tax (RSPT) as part of its response to the review of the Australian tax and transfer system led by Treasury Secretary, Dr Ken Henry (the Henry Tax Review).

The purpose of the Review was to provide a medium to long term framework for reform of Australia's taxation system. The scope of the Review encompassed Commonwealth and State government taxes, except the rate and base of the Goods and Service Tax (GST), and interactions with the transfer system (the welfare system).

The broad aim of the Review was to create a modern tax and transfer system that would position Australia to deal with contemporary challenges such as technological and environmental change, rapid globalisation and the impact of demographic change such as high population growth and the ageing of the population, which will diminish the efficiency of the current tax system.

For more information, please see the Hawker Britton Occasional Paper on the Henry Tax Review:
http://www.hawkerbritton.com/hawker-britton-media/federal-act/390/henry-tax-review-update.htm

Government's Initial Response to the Henry Tax Review

On 2 May 2010, the Government announced its 'first wave' reform measures in response to the Henry Review, including the RSPT. A detailed description of the original reform package is available at http://www.hawkerbritton.com/hawker-britton-media/federal-act/390/henry-tax-review-update.htm

Following consultation with the mining industry, the Government announced on 2 July 2010 several changes to the tax reform package. The changes are outlined in more detail above.

The tax reforms will be implemented over the short to medium term (over the next ten years). They are primarily related to company and small business taxes, superannuation, infrastructure and resources.

Negotiations and Agreement

Following consultation with key mining companies, on 2 July 2010 the Government announced that a 'breakthrough agreement' had been reached with the mining industry.

The Agreement includes a number of amendments to the original reform proposal:

The Prime Minister's media release is available at http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2010/055.htm&pageID=&min=wms&Year=&DocType=0

> "The changes recognise the views of industry about how they would like new investment to be treated – through higher uplift factors and faster depreciation of new investment, rather than guaranteed refundability of unused tax deductions."[2]

The main changes were:

- The name of the tax changed from the Resource Super Profits Tax to the Minerals Resource Rent Tax.
- The MRRT rate was reduced from 40 per cent to 30 per cent, and will apply to iron ore and coal only.
- The existing Petroleum Resources Rent Tax (PRRT) will be extended to cover all onshore and offshore oil, gas and coal seam methane projects.
- The PRRT will apply at a rate of 40 per cent.
- The company tax rate will be cut to 29 per cent (instead of to 28 per cent as originally proposed).
- There will be no Resources Exploration Rebate.

The new resource tax reforms are estimated to reduce revenue by $1.5 billion over the forward estimates compared to the original proposal. Correspondence

For the views of the Senate Select Committee on the Scrutiny of New Taxes on the negotiation process, see: http://www.aph.gov.au/senate/committee/scrutinynewtaxes_ctte/national_mining_taxes/report/index.htm

[2] Media Release, 2 July 2010, http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2010/055.htm&pageID=&min=wms&Year=&DocType=0.

Outline of the Amended Tax Reform Package

The MRRT and extension of the PRRT form part of the Government's wider response to the Henry Tax Review. The Government has established a website dedicated to the reform package at http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/pubs_reports.htm

In summary, the package of measures includes:

1. Introducing a Minerals Resource Rent Tax at a rate of 30 per cent for coal and iron ore.
2. Extending the Petroleum Resource Rent Tax to cover all onshore and offshore oil, gas and coal seam methane projects at a rate of 40 per cent.
3. Cutting the company tax rate to 29 per cent in 2012-13.
4. Giving small business an early start to the company tax rate cut from 2011-12.
5. Allowing instant asset write-off for small business.
6. Establishing a state infrastructure fund.
7. Increasing the Superannuation Guarantee rate to 12 per cent.
8. Introducing a Government superannuation contribution for low income earners.
9. Raising the Superannuation Guarantee age limit from 70 to 75
10. Changing concessional contributions caps for people over 50 with low superannuation balances.

Essentially, the revenue the Government will receive from the tax on resources will be channeled into increased superannuation benefits, infrastructure and business tax cuts.

It should be noted that these measures are fully funded and designed so that the MRRT offsets the benefits to small business, infrastructure and superannuation. Indeed, it is "not possible to do one without the other", Mr Swan noted.

The table below shows the impacts of the original reform package as outlined in the 2010-11 Budget. At that time the Resources Super Profits Tax was expected to generate approximately $12 billion in the years to 2013-14.

Budgetary impacts of the Government's tax reform agenda ($ million)[(a)]

	2010-11	2011-12	2012-13	2013-14
Company tax cut	-	-	-300	-2,000
Small business instant write-off and simplified depreciation	-	-	-	-1,030
Head start on a lower company tax rate for small business	-	-50	-300	-200
State Infrastructure Fund	-	-	-700	-735
Superannuation - Increasing the superannuation guarantee rate to 12 per cent	-	-	-	-240
Superannuation - Raising the superannuation guarantee age limit From 70 to 75	-	-	-	15
Superannuation - Low income earners government contribution	-	-	-	-830
Superannuation - Concessional contributions caps	-	-	-545	-785
Resource Exploration Rebate	-	-	-520	-600
Resource Super Profits Tax	-	-	3,000	9,000
Total	-	-50	635	2,595

(a) Australian Taxation Office administration costs will be reported in the 2010-11 Budget.

The changes announced on 2 July 2010 (outlined below) are estimated to reduce the revenue by $1.5 billion over the forward estimates compared to the Budget estimates above. It should be noted that in the table above, the 'Company Tax Cut' and 'Head start on a lower company tax rate for small business' figures will be halved, the 'Resource Exploration Rebate' will be removed and the Resource Super Profits Tax (now Minerals Resource Rent Tax) figures will change.

This table will be updated as new figures become available.

From the 2011-12 Commonwealth Budget

Minerals Resource Rent Tax — adoption of recommendations of the Policy Transition Group

Revenue ($m)					
	2010-11	**2011-12**	**2012-13**	**2013-14**	**2014-15**
Australian Taxation Office	-	-	..	..	..

> "The Government will adopt the recommendations of the Policy Transition Group (PTG) as the basis of the detailed design for Australia's new resource tax arrangements.
>
> The PTG was established to advise on the development of the technical design of the
>
> With respect to the MRRT, key PTG recommendations cover issues regarding the taxing point, starting base and starting base losses, deductions and test for deductibility, a phased extension of the $50 million threshold and transferability of expenditure and project losses.
>
> Overall the PTG recommendations are estimated to have no net impact on the Budget over the forward estimates."[3]

[3] Commonwealth Budget 2011-12 http://www.budget.gov.au/2010-11/content/bp2/html/bp2_expense-21.htm

MRRT & PRRT Legislation

Legislation for the MRRT and the PRRT was introduced into the House of Representatives on 2 November 2011:

1. Minerals Resource Rent Tax Bill 2011
2. Minerals Resource Rent Tax (Consequential Amendments and Transitional Provisions) Bill 2011
3. Minerals Resource Rent Tax (Imposition—Customs) Bill 2011
4. Minerals Resource Rent Tax (Imposition—Excise) Bill 2011
5. Minerals Resource Rent Tax (Imposition—General) Bill 2011
6. Petroleum Resource Rent Tax Assessment Amendment Bill 2011
7. Petroleum Resource Rent Tax (Imposition—Customs) Bill 2011
8. Petroleum Resource Rent Tax (Imposition—Excise) Bill 2011
9. Petroleum Resource Rent Tax (Imposition—General) Bill 2011

The bills were referred to the House Economics Committee for inquiry on 3 November 2011. Submissions have been made available on the Committee's website, and the report was published on 21 November 2011. The bills were passed by the House of Representatives on 23 November 2011 and will be debated in the Senate in early 2012.

State Budget Measures

South Australian Budget

On 16 September 2010, South Australian (SA) Treasurer released the SA 2010-11 Budget, which included the following changes to mining royalties.

- A three-tiered system will replace the existing two-tiered system that charged 3.5 per cent for existing mines and 1.5 per cent for new mines.

- The new top rate of 5 per cent will apply to metallic and energy minerals, ores and concentrates including yellowcake uranium, iron ore and copper concentrate – this is in line with Western Australia.

- The 3.5 per cent rate will continue for refined metallic products such as refined copper, gold and silver.

- The existing concessional rate of 1.5 per cent for the first five years of new mines will increase to 2 per cent.

Hawker Britton's Occasional Paper on the SA 2010-11 Budget is available at http://www.hawkerbritton.com/hawker-britton-media/budget/385/south-australian-budget-2010-11.htm.

Western Australian Budget

In May 2011, Western Australian (WA) Treasurer released the WA 2011-12 Budget, which included the following changes to mining royalties.

- From July 2012, iron ore royalties will increase from 5.25 per cent to 6.5 per cent, with a further increase scheduled for July 2013 to take royalties to 7.5 per cent.
- The July 2013 rate is equivalent to the rate for ‘lump’ ore and other ‘crushed and screened’ ores under the *Mining Act*.
- It is estimated that this reform will add $378 million in 2012-13 and over $800 million per annum in both 2013-14 and 2014-15 tot he WA budget.
- Overall, total royalties are expected to grow at an average rate of 3.6% per annum during the outyears.

New South Wales Budget

The NSW 2011-12 Budget foreshadowed an increase in coal royalties in NSW. The increase will only apply to firms that are subject to the MRRT. NSW legislation to implement the royalty supplement will be prepared after the Australian Government finalises its carbon tax and MRRT legislation.

The Budget Paper also states that “the NSW Government is willing to discuss with the Australian Government alternative proposals that recognise the impact of the carbon tax on NSW finances.”

The following table shows the Revenue impact from the proposed increase to coal royalties in the NSW 2011-12 Budget.[4]

Measure	Revenue Impact **(a)**			
	2011-12 $m	2012-13 $m	2013-14 $m	2014-15 $m
Increase coal royalties for firms liable to the Australian Government’s Minerals Resource Rent Tax		235	244	465

[4] NSW 2011-12 Budget http://www.budget.nsw.gov.au/__data/assets/pdf_file/0008/18296/bp2_ch5.pdf

The Opposition and Minor Parties' Response

The Opposition

The Coalition has indicated that it will oppose, and if implemented, rescind, the MRRT and extension of the PRRT. The Coalition has also previously indicated that it would not implement any of the spending measures that would be funded by the MRRT and extension of the PRRT.

The Coalition opposed the RSPT, describing it as an "*act of economic vandalism*" and "*a new tax that will eventually choke the goose that's laid the golden egg for Australia*". In his Budget Reply speech on 13 May 2010, Mr Abbott, stated that the Coalition would "*oppose the mining tax in opposition and we will rescind it in government.*"

The Senate Select Committee on the Scrutiny of New Taxes

The Senate Select Committee on the Scrutiny of New Taxes Report was released 29 June 2011, it is available at:
http://www.aph.gov.au/senate/committee/scrutinynewtaxes_ctte/national_mining_taxes/report/index.htm

The Australian Greens

On 22 November 2011, the Australian Greens agreed to pass the MRRT legislation through the House of Representatives on the basis of the Government's announcement of an additional revenue measure worth at least $20 million per annum.

Independent Members of Parliament

The 2010 Federal Election resulted in the election of five Independents. Given the context of minority Government, it is worth exploring each of the Independents' positions regarding the MRRT.

<u>Tony Crook – WA National , O'Connor (WA)</u>

Mr Crooke did not support the MRRT legislation in the House of Representatives.

<u>Bob Katter – Kennedy (QLD)</u>

Mr Katter did not support the MRRT legislation in the House of Representatives.

<u>Rob Oakeshott – Member for Lyne (NSW) & Tony Windsor – Member for New England (NSW)</u>

On 21 November 2011, following representations from Mr Oakeshott and Mr Windsor, the Prime Minister announced the following initiatives:

- $150 million to establish a new Independent Expert Scientific Committee. The Committee will advise on coal seam gas and large coal mining approvals. It will also oversee research on the impacts on water resources from coal seam gas and large coal mining projects, and commission and fund water resource assessments for priority regions. The Committee will be required to publicly disclose its advice to ensure local communities have all the best information available to them.

- A new National Partnership Agreement with the states through COAG, compelling the Commonwealth and states to take into account the advice of the Committee. $50 million in incentive payments will be provided to the states to deliver the National Partnership.

In light of the Government's announcement, Mr Oakeshott and Mr Windsor voted in favour of the MRRT legislation in the House of Representatives.

Andrew Wilkie – Denison (SA)

On 21 November 2011, following representations from Mr Wilkie, the Prime Minister announced an increase in the threshold at which small miners will incur an MRRT liability from $50 million per annum to $75 million per annum, with the threshold at which the tax is fully levied rising from $100 million per annum to $125 million per annum. Mr Wilkie said that he had been advised by the Government that the cost to revenue of changing the threshold would be approximately $20 million per annum.

In light of this announcement, Mr Wilkie voted in favour of the MRRT legislation in the House of Representatives.

Independent Senators

It is unclear whether Senator Nick Xenophon is supportive of the tax at this stage, having said that he needs to take some time to decide on his position.

Senator John Madigan (Victoria, DLP) has not commented publicly on the MRRT, but he made the following comments in a media release on 28 September 2010:

> *"The great economies of the world have strong manufacturing bases... They don't survive by simply digging holes in the ground, turning their country into a nation of drink waiters or by inviting competitors to bury them."*