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Australia's Mineral Resources Rent Tax

On 2 July 2010, the Australian Government announced that it had reached agreement with BHP, Rio Tinto and Xstrata for a new minerals resource rent tax (MRRT), which will apply to iron ore and coal mining profits.

The Government also announced that Australia's existing petroleum resource rent tax (PRRT) would be extended to all onshore and offshore oil and gas projects, including the Northwest Shelf.

The new MRRT and extended PRRT will apply from 1 July 2012.

On 3 August 2010, the Australian Government established a policy transitional group (PTG) to consider the MRRT. The PTG reported to Government on 21 December 2010 and made 94 recommendations regarding the design of the MRRT and the extension of the PRRT.

On 24 March 2011, the Australian Government announced its acceptance of all 94 recommendations.

A first draft of the MRRT legislation was released on 10 June 2011 for public comment by 14 July 2011. There remains opposition from within the mining industry to the MRRT. The possibility of a constitutional challenge to the MRRT has also been raised. It is possible that the MRRT legislation, when introduced, will be defeated in the House of Representatives as the Government needs not only the support of the Greens Party, but also of three independent Members of Parliament.

So, this update should not be taken as definitive legal advice and the detail of the MRRT legislation will need to be carefully examined when it is finalised.

An example, taken from the Australian Government's Facts Sheet – A New Resource Taxation Regime, is **annexed**. It shows how the MRRT is intended to operate, as well as showing the relationship between MRRT and company tax.

Key Issues

Draft MRRT legislation released on 10 June.

MRRT only applies to coal and iron ore

PRRT extended to all oil and gas

Extraction

PRRT legislation not yet released

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Some of the key features of the MRRT are:

1. The MRRT will apply to iron ore and coal mining in Australia but not other minerals.

2. The MRRT will not apply to miners with profits of less than $50 million per annum. Liability for MRRT is phased in from $50 million to MRRT profits of $100 million.

3. The MRRT will apply at the rate of 30%.

4. The MRRT will be assessable on the value of the commodity determined at the first saleable point (mine gate), less the costs incurred to that point.

5. The taxing point will generally be where the mineral is stockpiled after being extracted. Where a stockpile does not exist, the taxing point will be the point at which the mineral is delivered to the first unit of operation after extracted mining activities, or where there is a standalone arms-length sale to a third party prior to that taxing point.

6. The value of the resource at the taxing point will be determined by an arms-length sale to a third party and, where there is no arms-length sale, by valuation methodology set out in the MRRT legislation.

7. Significant depreciation allowances are available. Miners may elect to use book value or market value as a starting base for project assets, with depreciation accelerated over 5 years (for book value), or the effective life up to 25 years (market value at 1 May 2010) including mining rights.

8. All post 1 May 2010 capital expenditure will be added to the starting base. The book value starting base will be uplifted at the long term bond rate (LTBR) plus 7%. There is no uplift for the market value starting base.

9. Investment post 1 July 2012 will be able to be written off immediately.

10. Unutilised MRRT losses can be carried forward at the LTBR plus 7%. MRRT losses will only be transferable between projects producing the same commodity. With the exception of the costs of acquiring a mining tenement, losses are only transferable within the same taxpayer group.

11. State royalties will be fully credited against MRRT liability and unused credits for royalties will be uplifted at the LTBR plus 7%.

12. Most payments of revenue and capital (prior to the taxing point) will be generally deductible for MRRT purposes. Of relevance to financiers is the exclusion as deductible expenses of interest and other borrowing costs, hire purchase and finance lease costs, hedging and foreign exchange losses, rehabilitation bonds and payments into reserves sinking or insurance funds. Whilst many of these costs are deductible for income tax purposes, they will not be deductible for MRRT purposes.

13. Income tax and GST is not deductible against MRRT.

Some key points on PRRT are:

1. Payments made to native title claimants pursuant to agreements under the Native Title Act 1993 will be deductible to the extent they relate to upstream coal and iron ore mining operations.

2. The PRRT will be extended to all Australian onshore and offshore oil and gas projects, including the Northwest Shelf.

3. The PRRT is currently levied on profits from the extraction and early stage processing of petroleum operations upstream of the taxing point at the rate of 40%.

4. Special provisions (yet to be seen) calculating the value of marketable commodity in integrated gas to liquids projects, such as LNG projects, will apply.

5. Projects in the joint petroleum development area governed by the Timor Sea Treaty will not be covered by PRRT.

Annex

A New Resource Taxation Regime

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Resource Charge	**$m**	**$m**	**$m**	**$m**	**$m**	**$m**
Revenue	0	520	830	910	1090	1100
Operating expenses	0	130	210	230	270	280
Depreciation	1000	0	0	0	0	0
MRRT allowance @ 13 per cent	0	130	96	28	0	0
MRRT unutilised losses	0	1000	740	216	0	0
MRRT profit/loss	-1000	-740	-216	436	820	820
MRRT @ 30 per cent	0	0	0	131	246	246
Extraction allowance @ 25%	0	0	0	33	62	62
MRRT after extraction allowance	0	0	0	98	185	185
Royalty @ 7.5 per cent	0	39	62	68	82	83
Uplifted Royalty offset	0	0	44	120	102	0
Net MRRT	0	0	0	0	1	102
Total resource charge	**0**	**39**	**62**	**68**	**82**	**185**
Company tax						
Revenue	0	520	830	910	1090	1100
Operating expenses	0	130	210	230	270	280
Depreciation	0	200	200	200	200	200
Total resource charge	0	39	62	68	82	185
Company taxable income	0	151	358	412	538	436
Company tax @ 29 per cent	**0**	**44**	**104**	**119**	**156**	**126**
Profit before tax	0	190	420	480	620	620
Total tax	0	83	166	188	238	311

The example presents outcomes for a single project company with an equity financed mine that operates for 5 years. The company is assumed to invest $1 billion in the first year of the project. Over the life of the project the pre-tax rate of return (revenue less operating and investment costs) is 50 per cent.

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