Australia's Minerals Resource Rent Tax in force from July 2012

On 19 March 2012, the Australian Parliament passed legislation for a mining tax on iron ore and coal. The new tax, known as the Minerals Resource Rent Tax (MRRT), will apply from 1 July 2012.

The Australian Treasury forecasts revenue of A$10.6 billion from the MRRT in its first three years.

The MRRT legislation also extends coverage of the existing Petroleum Resource Rent Tax (PRRT) so that from 1 July 2012 it will apply to all onshore and offshore oil and gas production in Australia.

This briefing outlines the details of the MRRT and amended PRRT.

Overview of the MRRT

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, which will apply to iron ore and coal mining profits.

The MRRT legislation was submitted to the Australian Parliament for voting by the House of Representatives on 2 November 2011.

On 22 November 2011, the House of Representatives voted in favour of the MRRT legislation.

On 19 March 2012, the legislation was also passed by the Senate. The MRRT legislation will now be presented to the Governor-General for Royal Assent, before coming into effect from 1 July 2012.

Key features of the MRRT legislation are set out on the following pages.

Overview of the PRRT Amendments

As part of the MRRT legislation, the existing PRRT is being amended. The existing PRRT applies at a rate of 40% to the profits derived from the extraction and early processing of petroleum within a petroleum project within Commonwealth waters, with some exceptions.

The amendments included with the MRRT legislation provide that, from 1 July 2012, the PRRT will apply to all onshore oil and gas production, as well as to the waters of the previously exempt Northwest Shelf.

Note that the MRRT legislation passed by the Senate comprised a complex package of 11 separate bills. This update necessarily summarises the details of the MRRT and so should not be taken as definitive legal advice.

Key issues

- MRRT legislation passed by the Australian Parliament on 19 March 2012
- MRRT applies to coal, iron ore and certain gasses
- MRRT to apply from 1 July 2012
- PRRT extended to all oil and gas extraction

Key features of the MRRT

What it is: The MRRT will apply to iron ore and coal mining, and coal seam gas where extracted as a result of mining coal (referred to as 'taxable resources').

What it applies to: The MRRT includes a low profit offset such that miners with profits of less than A$75 million per annum will not pay the

MRRT. The low profit offset is phased out for miners with profits of between A$75 million to $120 million, and ceases to apply where profits exceed $120 million.

What is the rate: The MRRT will apply at an effective rate of 22.5% (30% reduced by a 25% extraction allowance) on a miner's "mining profit".

What is mining profit: A project's mining profit is its mining revenue, less its mining expenditure, and less certain MRRT allowances.

What is mining revenue: Generally, mining revenue is the part of what the miner sells its taxable resources for that is attributable to the resources in the condition and location they were in just after extraction (i.e. the 'valuation point').

What is mining expenditure: Mining expenditure is the cost a miner incurs in bringing the taxable resources to the valuation point.

Importance of the valuation point: The valuation point is after taxable resources have been extracted from the ground but before they have undergone any significant processing or value-add. Where the taxable resource is improved through beneficiation processes, such as crushing, washing, sorting, separating and refining, the value added is attributable to the miner. According to the Government, the rationale for this is that the profit attributable to the miner at the valuation point represents the "value of the resource to the Australian community".

For coal and iron ore: Generally, the valuation point is just before it leaves the mining project interest's run-of-mine stockpile.

What are MRRT allowances: Generally, these fall into two categories:

Royalty allowances: to deal with State and Territory mining royalties.

Mining loss allowances: the project's relevant prior year losses uplifted by the long term bond rate (**LTBR**) plus 7 per cent.

Pre-mining Expenditure: The MRRT recognises that exploration expenditure, and other pre-mining expenditure, in pursuit of taxable resources is a necessary part of the mining process and should be recognised as a cost of that process.

Income tax: The MRRT is an allowable deduction for income tax purposes.

New projects: For new mining projects starting after July 2012, the initial investment can be written off immediately rather than depreciated over years. This means companies will pay no MRRT until they have made enough profit to cover the initial investment (compounded at the uplift rate).

Existing projects: For existing projects, companies are able to calculate a 'base value' and the company can deduct depreciation on this base value when calculating its profit on which the MRRT is levied. In so doing, companies may choose either a book value which would be uplifted or a market valuation which is not uplifted. Those companies that wish to use their current written down book values of the project's assets, excluding the value of the resource, will be provided with accelerated depreciation over five years. Alternatively, companies may instead rely on recognition of past investments through a credit that recognises the market value of that investment, written down over a period of up to 25 years.

What does the MRRT mean for your joint venture?

The Government prepared the following examples (taken from the MRRT Explanatory Material) to explain the operation of the MRRT and how it applies in certain cases:

Example 1

ExplorerCo enters into a joint venture with DiggerCo (the joint venturers) to produce coal. The joint venturers hold a "production right" in equal shares and are entitled to an equal share of the resources extracted from the project area.

Each of the joint venturers has a mining project interest and will be liable for MRRT.

Note: a "**production right**' is any authority, licence, permit or right under an Australian Law granted by a State or Territory (or in some instances a private land owner) that enables an entity to extract resources from a particular area in Australia.

Example 2

ExplorerCo holds a production right over a project area, from which it is entitled to extract iron ore.

ExplorerCo does not have the required expertise to extract the iron ore so it enters into a joint venture with DiggerCo to extract the resources. In return for venturing its extraction expertise, DiggerCo receives 50% of the resources extracted from the project area. ExplorerCo takes the other 50% of the iron ore as its return on its production right. Both DiggerCo and

ExplorerCo have mining project interests.

DiggerCo and ExplorerCo will be liable for MRRT.

Example 3

HolderCo grants DiggerCo an exclusive licence to access and mine coal from its production right. In consideration for the grant of the exclusive licence, DiggerCo is required to pay HolderCo $5.00 per tonne for all coal sold during the month.

DiggerCo acquires title to the coal after it is extracted and loaded on the ROM stockpile. HolderCo is required to pay mineral royalties to the State. However, under the licence agreement it is entitled to be reimbursed for those royalties by DiggerCo.

In this example, although HolderCo is the legal and beneficial holder of the production right, DiggerCo has a mining project interest and HolderCo does not.

Further information

For further information on the impact of the MRRT on your business, please contact any of the Clifford Chance contacts listed on this briefing.

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