Contents

Purpose ........................................................................................................................................... 2
Background ........................................................................................................................................ 2
  Basis of policy commitment .......................................................................................................... 2
  Committee consideration ............................................................................................................... 3
Financial implications ...................................................................................................................... 3
Main issues ....................................................................................................................................... 4
  Constitutional concerns ................................................................................................................ 5
    Is it a tax on state property – does it contravene section 114 of the Commonwealth Constitution? .................................................................................................................. 5
Key provisions .................................................................................................................................. 9
  Object of the Bill ............................................................................................................................ 9
  A miner’s liability for MRRT ......................................................................................................... 10
Minerals Resource Rent Tax Bill 2011

Date introduced: 2 November 2011
House: House of Representatives
Portfolio: Treasury
Commencement: 1 July 2012

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through http://www.aph.gov.au/bills/. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

The Minerals Resource Rent Tax Bill 2011 is lengthy and complex. In addition to creating new legal concepts, it necessitates the application of concepts from income tax, GST and mining legislation, as well as the use of market valuation principles and OECD transfer pricing guidelines. Consequently, this Bills Note seeks to outline the key operative provisions by way of a reference map to the MRRT Bill. It will also discuss the key issues raised by the design of the MRRT.

Purpose

The main purpose of the Minerals Resource Rent Tax Amendment Bill 2011 (the Bill) is to establish the framework and core rules for taxing above normal profits made by miners (also known as economic rents) that are reasonably attributable to the resources in the form and place they were in when extracted (clause 1-10).

Background

Basis of policy commitment

The Minerals Resource Rent Tax (MRRT) is a reworked form of the proposed Resources Super Profits Tax (RSPT), which was first announced by the Rudd Government on 2 May 2010 as part of a set of reform measures in response to the review of the Australian tax and transfer system, led by the Treasury Secretary Dr Ken Henry (the Henry Tax Review). Amendments were made to the RSPT after further consultation by the Government with key mining companies, and it was recast as the Minerals Resource Rent Tax (MRRT) on 2 July 2010. The Agreement included a number of amendments to the original reform proposal.

2. K Rudd (Prime Minister) and W Swan (Treasurer), Stronger, fairer, simpler: a tax plan for our future, media release, 2 May 2010, viewed 3 March 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FKSQW6%22

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Committee consideration

On 30 September 2010, the Senate Select Committee on New Taxes initiated an inquiry into the minerals resource rent tax and expanded petroleum resource rent tax. On 29 June 2011 the Committee published its report which can be viewed at:

On 2 November 2011 the Federal Treasurer referred the package of MRRT Bills to the House of Representatives Standing Committee on Economics for inquiry and report. On Monday, 21 November 2011, that Committee presented its report, inquiry into the Mineral Resource Rent Tax Bills 2011. The report can be viewed at:

On 10 November 2011, the Senate referred the provisions of the Minerals Resource Rent Tax Bill 2011 and associated legislation to the Economics Legislation Committee for inquiry and report by 14 March 2012. The Report was delivered on time and, after an extensive exploration of the issues, the single recommendation of the Majority was that the Bills should be passed.

The Coalition, in a minority report, offered a different analysis and recommended that the Bills not be passed on the basis that the mining tax was ‘divisive, complex, unfair, fiscally irresponsible and distorting, reduces our international competitiveness and was developed through a highly flawed and improper process.’

The Greens provided an alternative report again, making thirteen recommendations designed, in the words of their report, ‘to improve and extend the Bills with a series of amendments,’ including increasing the MRRT’s rate from 22.5 per cent to 40 per cent, as per the Henry Tax Review, that the coverage of the MRRT be extended, that royalties should not be rebated under the MRRT and that a sovereign wealth fund be created.\(^3\)

Financial implications

The Explanatory Memorandum states that the MRRT will have these revenue implications:\(^4\)

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\(^4\) Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 4.

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Main issues

The MRRT is complex, its demands on affected miners are arguably complex and protracted. According to accounting firm KPMG, ‘whilst the Exposure Draft legislation has been drafted to be prescriptive in its operation, the integration of the difference concepts and principles will inevitably mean that miners will be faced with difficulty and uncertainty in calculating their MRRT liabilities’.\(^5\)

Notwithstanding some of the changes and clarification to the Exposure Draft, this seems to remain a relevant opinion of the legislation. This is acknowledged by the Explanatory Memorandum to the Bill which states:

This measure is expected to impose significant compliance costs on taxpayers in the iron ore and coal sectors (approximately 320 taxpayers). In the first year of the MRRT’s operation, taxpayers will need to value their starting base and modify their accounting procedures. Ongoing compliance costs will reduce over the medium to long term.\(^6\)

The reliance on OECD transfer pricing methodologies for calculating MRRT liability raises potentially tricky practical problems in navigating and using the legislation. This is highlighted by both overseas jurisprudence and the Federal Court decisions in *Roche Products Pty Ltd v Commissioner of Taxation* and *SNF (Australia) Pty Ltd v Commissioner of Taxation*.\(^7\) These cases illustrate the vexed issue of setting transfer prices that are acceptable to the Australian Taxation Office and other revenue collecting agencies overseas.

On the 13 June 2011 it was reported that Andrew Forrest, of Fortescue Metals, wrote a letter to the Prime Minister, Julia Gillard, outlining his concerns about the proposed MRRT. The Age newspaper reported that in his letter Forrest wrote:

"The tax base will be unreasonably narrow, being focused on 320 taxpayers in two resource areas: coal and iron ore. It will be a volatile tax subject to huge fluctuations depending on international commodity prices (making it unsuitable to fund ongoing budget commitments your government has made such as reducing company tax and funding increased superannuation).

[...] And the deductions given to the multinational, multi-commodity companies are so large as to protect them from retrospectivity that they are unlikely to make a commensurate contribution to this tax.\(^8\)"

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Constitutional concerns

The design of the MRRT has generated some concerns and claims about its constitutional validity with mining companies and the states of Western Australia, Queensland and New South reportedly sending signals of a constitutional challenge if the MRRT legislation is passed. The sections of the Constitution which MRRT engages and is argued to breach are: sections 51(ii), 99 and 114.

In considering whether the Commonwealth has the power to impose the proposed minerals resource rent tax, section 51 of the Commonwealth Constitution is an appropriate point of commencement for examining the Commonwealth’s power in this regard.

Section 51 of the Commonwealth Constitution provides:

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

(i) Trade and commerce with other countries, and among the States:

(ii) Taxation; but so as not to discriminate between States or parts of States:

[...]

Section 51(ii) of the Commonwealth Constitution, the taxation power, is a concurrent power, thus it can be exercised by both the Commonwealth and the states. The evolution of the Commonwealth’s taxing power remains subject to the Constitution, including the requirement in section 114 that it is not a tax on state property, and the requirement under section 51(ii) that the tax does not discriminate between states or parts of states.

Is it a tax on state property – does it contravene section 114 of the Commonwealth Constitution?

Section 114 of the Constitution provides:

A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State [emphasis added].

Section 91 of the Constitution, ‘Exceptions as to bounties’, provides:

Nothing in this Constitution prohibits a State from granting any aid to or bounty on mining for gold, silver, or other metals, nor from granting, with the consent of both Houses of the Parliament of the Commonwealth expressed by resolution, any aid to or bounty on the production or export of goods.

This may be interpreted as supporting the view that minerals (and coal) are the property of the states in which they are found. That is, the minerals are owned by Crown in the right of the states. It is thus for each state to determine the royalties payable on minerals extracted from that state.

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Certainly the popular view is that the Crown, in right of the individual states, has the ownership of minerals before they are mined. The further question arises, however, as to who owns the minerals as the profit is made from them. While it is accepted that this point may be the subject of further dispute, it is also noted that the issue of the MRRT’s constitutionality is, in the final analysis, unlikely to turn directly or only on the question of who owns the below ground minerals and coal, but will also depend on whether there is a tax being imposed on that property.

According to the details of the tax provided in the Bill, the tax is not imposed on the mineral resources itself – rather it is proposed to be applied at a nominal rate of 30 per cent on the taxable profit of a project.

This arrangement may be designed to avoid the constitutional problem, however past judgements of the High Court reflect an approach to the examination of a factual matrix that is concerned with the substance rather than the form when deciding on this issue. Thus, the net capital gain on the disposal of an asset has been construed as a tax on property.

While there have been significant constitutional developments since the case, it may be relevant to note that in the historically significant case of the Melbourne Corporation (1947), which considered section 114, the High Court stated that ‘the question must be whether the [Commonwealth] legislation . . . curtails or interferes in a substantial manner with the exercise of constitutional power by [the state].’

In the more recent case of South Australia v Commonwealth (the SA Trust case) section 114 was discussed in some detail. In that case one possible interpretation of section 114, rejected by the majority, was to give a broad meaning to ‘tax on property’ so that the immunity extended not only to the tax on the property, but also in respect of a transaction affecting its property or on the transaction itself.

Instead the majority took the view that the Court ‘has treated the section as conferring an immunity from a tax on property in its strict sense, that is, as a tax on property, as such’.

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9. ‘...the principle of the owner of land owning the minerals within it has been virtually abolished by statute in Australia. The general rule is that the Crown (in right of the State) owns all minerals.’ A pithy summary from ‘Australian mining law’, Wikipedia, viewed 16 March 2012, [http://en.wikipedia.org/wiki/Australian_mining_law](http://en.wikipedia.org/wiki/Australian_mining_law)


It should be noted the quote has been adapted to be relevant to the situation in point, and was originally phrased to cover legislation and its effect by either the State or the Commonwealth government and their relative immunities.


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Accordingly, a tax is properly characterized, for the purposes of s. 114 as a ‘tax on property’ if, and only if, it is imposed upon a taxpayer by reference to a relationship between the taxpayer and the relevant property and the relationship is such that the tax represents a tax on the ownership or holding of the property in question.

Essentially it was accepted by the majority that while the income tax (on income derived by way of interest on money lent) did not constitute a tax on property within section 114, there was unanimous agreement that the tax imposed on net capital gains violated section 114 as it fell within the description of a tax on property.  

The majority also observed:

Although the distinction between a tax on property and a tax on transactions has continued to be a very important factor in the interpretation and application of the section, it has been acknowledged that a tax framed as a tax on transactions may nevertheless in some circumstances amount to a tax on property, that is, a tax on the ownership or holding of property.

The minority, Brennan and McHugh JJ, held that the scope of the section 114 immunity extends to taxation on property of any kind, whether the property be an item of revenue or an item of capital.

Accordingly, in determining whether SASFIT [the South Australian Superannuation Fund Investment Trust, regarded as State property], is immune from tax assessed under the Act by reference to interest on money lent by SASFIT, the question is whether a tax imposed on a resident taxpayer’s taxable income, being the surplus of assessable income (according to ordinary concepts) over allowable deductions, is a tax on property.

Their reasoning was that:

The scope of the s. 114 immunity thus extends to taxation on property of any kind, whether the property be an item of revenue or an item of capital. ...The immunity would be illusory if tax revenue could be depleted by adverse taxation. And s. 114 would have an illogical operation if it failed to protect the revenue of a State or the revenue of the Commonwealth from the taxation by the other but protected capital held or owned by a State or by the Commonwealth.

As can be seen from these decisions, the first hurdle any plaintiff will have in claiming section 114 immunity is establishing that the state is, relevantly, the owner of the property. (The immunity does not apply to property which is not owned by a state.) The plaintiffs would also need to convince the court that the profits were the ‘fruit’ of that property and hence also protected (the minority view in the SA Trust case).

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15. Ibid., paragraph 19, p. 5.
16. Ibid., paragraph 2, p. 9.
17. Ibid., paragraph 4, p. 10.
In other words, the difficulty for a plaintiff could be that if the resource has passed from the state to the miner, because then the argument based on state-owned property within the meaning of section 114 will fail. It appears that once the miner exercises the rights to extract the resource then ownership will pass (whether it be under terms of a lease\(^\text{18}\), licence or otherwise). Furthermore this transfer can occur regardless of the actual time of the payment of the royalty.\(^\text{19}\) Note that a royalty is ‘paid in respect of minerals used, sold, transferred or otherwise disposed of’ by the miner, so the presumption is that the ownership is with the miner.

However this is what may be argued—that there is a sufficient connection with the minerals under the ground that still belong to the Crown in right of the state, with the profits derived from such minerals in the hands of the taxed miner. Perhaps the argument will be sustained by some notional connection with the crediting of the royalty payments by the Commonwealth.

The definitive argument, if it comes to that, will turn on these and other provisions to test whether the tax on the rent or profits is sufficiently removed from the resources themselves. It would seem clear from the definition of the MRRT liability above, that a liability for the tax will not arise if there is no mining profit per se. At this point, the intention and interpretation of the Bill needs to be looked at.

If the suggestion is, that this Bill’s scheme is taxing the property of the state, thus breaching the Constitution, the design of the tax would be crucial. If the arrangement is like the transactions of other profits taxes, it is not a tax on the property; it is a tax on the profit, thereby not risking that constitutional downside.

**Does the tax discriminate between states in contravention paragraph 51(ii) and section 99 of the Commonwealth Constitution?**

As outlined above, paragraph 51(ii) of the Constitution provides that the Commonwealth has power with respect to taxation, but so as not to discriminate between states or parts of states.’

Furthermore section 99 states:

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18. ‘Mining lease’ is a lease covering land or water which grants the lessee the right to explore for or extract minerals from that area. The lease will normally specify a form of compensation to the lessor, through a fixed rent or a royalty on the tonnage or value of the minerals extracted. Leases will generally specify conditions relating to the conduct of the operations and rehabilitation. Exclusive possession is a normal incident of mining leases, but it may not necessarily be an incident of every arrangement which bears the title of lease. For example see *Mineral Sands (Cooljarloo) Mining and Processing Agreement Act 1988* (WA). This Act ratifies the agreement entered into. Both the Act and the Agreement are silent on the question of ownership of the minerals.

19. ‘Royalty’. A payment made in respect of the exercise of a right to take a substance, and calculated either in respect of the quantity taken or the value of the substance taken, or the occasions upon which the right is exercised.: *Stanton v FCT* (1955) 32 CLR 630. *Butterworth’s Legal Dictionary*, Third Edition. Thus, using the WA Act and Agreement referred to in the footnote above as an example, section 7 states that the Joint Venturers shall pay to the State in respect of all minerals mined or produced by the Joint Venturers from the Mining Lease and used, sold, transferred or otherwise disposed of by them, royalties at the rates from time to time prescribed under or pursuant to the provisions of the mining Act.

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In their submissions to the Economics Legislation Committee’s inquiry into the Minerals Resource Rent Tax Bill 2011 [Provisions] and related Bills, the Institute of Public Affairs\textsuperscript{20} and Fortescue Metals Group Ltd\textsuperscript{21} raised arguments that the design of the MRRT may be in contravention of these two parts of the Constitution because it provides full credit for state royalties paid in relation to a mining project. Since the states vary in the royalties that they charge, this will result in uneven outcomes. However, any uneven outcomes are perhaps more properly accounted for by the choices of states to operate different royalty regimes. Thus it could be argued in turn that the Commonwealth was not discriminating but rather it was treating diverse schemes alike.

### Key provisions

The following section provides a brief overview of the key provisions of the Bill. For more detailed information refer to the Explanatory Memorandum.

#### Object of the Bill

The object of the Bill is to ensure that the Australian community receives an adequate return for its taxable resources (mainly coal and iron ore), having regard to: the inherent value of the resources; the non-renewable nature of the resources; the extent to which the resources are subject to Commonwealth, state and territory royalties. The Bill proposes to do this by taxing above normal profits made by miners (also known as economic rents) that are reasonably attributable to the resources in the form and place they were in when extracted (clause 1-10).

The policy of having a mining tax is not unique to Australia. In the appendix to their paper titled ‘The Minerals Resource Rent Tax—Selected Issues’, S Kompo-Harms and K Sanyal describe the mining tax regimes of selected competitor countries (as of December 2010). However, the authors note that it is difficult to directly compare resource taxation regimes.\textsuperscript{22}

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\textsuperscript{20} Institute of Public Affairs, Submission 12, p. 21.
\textsuperscript{21} Fortescue Metals Group Ltd, Submission 26, pp. 11–12.

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A miner’s liability for MRRT

A miner is an entity that has a mining project interest. What is the liability threshold for the MRRT?

Miners with assessable profits of equal to or less than $50 million of MRRT assessable profits (revenue minus expenditure) in an MRRT year will be excluded from paying the MRRT. This is because they will receive a low profit offset equal to the full amount of their MRRT liability (clause 45-5). The low profit offset is designed to gradually phase out for profits from $50 million up to $100 million (clause 45-10). Miners with low profitability may also use a simplified method of calculation based on accounting principles, though subject to certain exclusions. The threshold is to be calculated having regard to connected/affiliated entities. This threshold is a change from the Government’s initial proposal and is expected to significantly reduce the number of miners captured by this tax to approximately 320, as compared with the Government original proposal that would have seen the MRRT apply to some 2,500 miners. A miner’s MRRT liability for a year may also be reduced to nil by the rehabilitation tax offset (clause 225-5).

The MRRT applies to particular profits made from extracting taxable resources for a new or existing mining project interest for a year (clause 10-1). Thus, mining revenue is calculated separately for each mining project interest unless the mining project interests are combined, in which case the miner is liable to pay MRRT for an MRRT year, equal to the sum of its MRRT liabilities for each of its mining project interests for that year.

What is a taxable resource?

A taxable resource is a quantity of any of the following, regardless of the use to which it is or will be put, or what is or will be produced from it after extraction (subclause 20-5(1)):

- iron ore
- coal
- anything produced from a process that results in iron ore or coal being consumed or destroyed without extraction, or
- coal seam gas extracted as a necessary incident of mining coal.

Thus, most petroleum gases will not be taxable resources for MRRT purposes but instead will be subject to the Petroleum Resource Rent Tax. PRRT is payable when assessable receipts exceed deductible expenditures, and is levied at the rate of 40 per cent. The practice of the Australian Taxation Office in interpreting what is a taxable resource may assume significance for liability. This is because if a resource is treated as a gas, PRRT is payable at a rate of 40 per cent rather than the...
effective rate of 22.5 percent. This may therefore provide an incentive to change mining methods so as to fall under MRRT rules rather than PRRT rules.

What is the taxing or valuation point?

The concept of the valuation point is central to determining the revenue and expenditure that make up mining profit. The valuation point is a defined point in the extractive process (clause 40-1). This is the partition between upstream and downstream mining activities. Mining operations that happen before the valuation point are upstream operations and those that occur after the valuation point are downstream operations.

For coal and iron ore, the valuation point is just before the resource is removed from the mining project interest’s run-of-mile stockpile.

However, if the resource is not stored on a run-of-mile stockpile, or if it is bypassed in a particular case, the valuation point is instead the point at which the resource enters the first benefication process after extraction. Or, if there is not one then the point at which the resource is moved away from the immediate point of extraction (clause 40-5).

For any gas that is an extractable resource, the valuation point is when it exits the wellhead (subclause 40-5(3)).

What is a mining project interest?

The concept of a mining project interest is central to the MRRT. This is because a miner’s liability is based on its MRRT liabilities for each of its mining project interests (clause 15-1). A mining project interest is principally a share of the output of an undertaking to extract taxable resources (clause 2-1).

The main kind of mining project interest is an entitlement to share in the output of a mining venture carried on to extract taxable resources and produce a resource commodity (which could be the taxable resource or something produced from the taxable resource). It must relate to at least one production right. If the mining venture relates to one or more production rights, the entity 24 has

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24. Entity has the meaning given by subsection 995-1(1) of the Income Tax Assessment Act 1997. Entity means any of the following:
(a) an individual
(b) a body corporate
(c) a body politic
(d) a partnership
(e) any other unincorporated association or body of persons
(f) a trust
(g) a *superannuation fund.
Paragraph (1)(e) does not include a *non-entity joint venture

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a separate mining project interest in relation to each production right (clause 15-5). An undertaking is a mining venture if the purpose, or a purpose, of the undertaking is:

- to extract some or all of the taxable resources from the area covered by one or more production rights, and
- to produce an output that is a taxable resource extracted under the authority of the production right or rights, or something produced using such a taxable resource (subclause 15-5(3)).

A production right is another right, under an Australian law, that authorises its holder to extract the resources from a particular area (called a ‘project area’). If an authority or right (however described) under an Australian law is not required to extract a taxable resource from a particular area—an interest in an area in Australia that allows a person to extract a taxable resource from the area. However, an exploration right is not a production right (clause 15-15).

Chapter 4 of the Bill sets out special rules about mining project interests, including the combining, transferring and splitting of mining project interests, and their suspension and termination.

Once a mining project interest has been identified, the next step is to calculate the mining profit for the interest for the MRRT year.

**How is a miner’s liability for MRRT is calculated?**

A miner’s liability for MRRT is calculated by reference to the following formula (clause 10-5).

\[
\text{MRRT liability} = \text{MRRT rate} \times [\text{Mining profit} - \text{MRRT allowances}]
\]

The components of the MRRT liability formula are outlined below.

**MRRT rate** = 22.5 per cent — the MRRT is payable at the nominal rate of 30 per cent, however a 25 per cent extraction allowance provided in recognition of the miner’s employment of specialist skills will make the effective MRRT rate before company tax = 22.5 per cent and after company tax = 15.75 per cent.

**Mining profit** = mining revenue minus mining expenditure.

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25. The MRRT rate has the meaning given by section 4 of the *Minerals Resource Rent Tax (Imposition — General) Act 2011*; section 4 of the *Minerals Resource Rent Tax (Imposition — Customs) Act 2011*; section 4 of the *Minerals Resource Rent Tax (Imposition — Excise) Act 2011*. It should be noted that as the MRRT is a tax, the imposition of the tax itself must be in a separate Bill due to constitutional requirements (section 55).


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**Mining revenue** is a fundamental concept in the tax as it feeds directly into the calculation of the mining profit for a mining project interest for an MRRT year.\(^{27}\) Mining revenue is calculated separately for each mining project interest (unless the interests are combined) (clause 30-5). Revenue in respect of a mining project interest in basic terms includes revenue from:

- supplying the taxable resource prior to export
- exporting or using the taxable resource
- supplying, exporting or using something produced from taxable resources
- economic recoupment of mining expenditures for the mining project interest
- compensation for loss of taxable resources for the mining project interest, and
- an amount received under a take or pay contract that cannot be related to the supply of a particular quantity of taxable resource (clauses 30-A, 30-B, 30-C).

While this list may seem rather straightforward, working out mining revenue is perhaps the most complex aspect of Bill.

If the resource is supplied at an arm’s length dealing, the actual consideration is used as the consideration amount. If the resource is not supplied at arm’s length then the arm’s length consideration is used.

The arm’s length consideration for a supply is defined as the amount of consideration that would reasonably expected to be to be received or receivable by the miner as consideration for the supply if the miner made the supply under an agreement between the miner and another entity, and they were dealing wholly independently with one another in relation to the supply (clause 30-30).

The most reliable measure to determine an arm’s length transaction is a method which has regard to the miner’s circumstances and the available information. However, if it is not possible to work out the arm’s length consideration in accordance with aforementioned methods, the arm’s length consideration for a supply is the amount that is, in the Commissioner’s opinion, fair and reasonable.

The consideration amount must be determined and then adjusted in order to determine the market value of the resource at the valuation or taxing point.

**Clause 215-15(2)** makes reference to OECD transfer pricing methodologies for transfer pricing. Transfer pricing is the process by which multinational corporations determine the prices paid for goods and services supplied and bought by related entities in an international group. As mentioned in the main issues section of this digest, the practical application of those methodologies can be significantly problematic.

**Mining expenditure** is mainly the costs necessarily incurred on upstream mining operations — in finding and extracting the taxable resources and getting them to their valuation point (clause 35-10 35-15 and 35-20).

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27. Explanatory Memorandum, p. 44.

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Upstream mining operations seems to be rather broad in its capture and may, for example, include expenditure on computer systems, staff training, staff accommodation, a share of relevant administration expenses. Mining operations could include exploration and closure of mine sites.

Significantly, new investment can be written off immediately rather than depreciated over a period of time. This is designed to maintain the incentive to invest in mining because a new project would not be subject to the MRRT until it has made sufficient return to pay off its upfront investment.

However, certain expenditures are excluded under subdivision 35-B:

- cost of acquiring rights and interests in projects
- royalties
- financing costs
- hire purchase agreements
- non-adjacent land and buildings used in administrative or accounting activities
- hedging or foreign exchange arrangements
- rehabilitation bond and trust payments, and
- payments of income tax or GST.

Mining allowances, in order of application in working out MRRT liability are as follows:

- royalty allowance
- transferred royalty allowance
- pre-mining loss allowance
- mining loss allowance
- starting base allowance
- transferred pre-mining loss allowance, and
- transferred mining loss allowance.

The allowance highest in the order must be fully applied before the next highest can be applied (clause 10-10).

Royalty allowance, for mining royalties the miner pays to the states and territories. According to the Explanatory Memorandum,

Royalty regimes and rates vary across jurisdictions but are most commonly a charge on the volume or value of the resource, generally at the point of export or sale to a third party. These royalties are often a proxy for the rents available from that resource. ²⁸

These Royalties will remain payable but with a credit to ensure that the royalties and the MRRT do not double tax the mining profit. Unused credit can be uplifted at the long term bond rate (LTBR) plus 7 per cent and carried forward, but it cannot be refunded (clause 60-5). Clause 60-20 sets out the rules for determining when a royalty credit arises and clause 60-25 sets out the method for


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working out the amount of the royalty credit for an MRRT year in which the royalty credit arises in relation to a liability of a miner.

Royalty credits that are not applied to a royalty allowance may be applied to transferred royalty allowances for other mining project interests (proposed Division 48).

**Transferred royalty allowance**, A miner’s MRRT liability for a mining project interest may be reduced by mining royalties, paid to the Commonwealth, states and territories, that relate to one or more other mining project interests. However, this is subject to the interests meeting the requirements of an integration test from the time the royalty is incurred to the time it reduces the MRRT liability (clause 65-5).

Clause 255-5 provides that in terms of **upstream integration**, a mining project interest is integrated with another project at a time if the same miner has both of the interests and either:

- both of the interests relate to iron ore, or
- both the interests do not relate to iron ore, and

each of those interests relate to the same mine or proposed mine.

Clause 255-10 provides that in terms of **downstream integration**, a mining project interest is integrated with another project at a time if the same miner, who has made a valid choice to integrate has both of the interests and either:

- both of the interests relate to iron ore, or
- both the interests do not relate to iron ore, and

either the downstream mining operations for each of the interests, or the mining operations as a whole for each of the interests are, taking account of the following matters, integrated:

- the manner in which those operations are carried on, and
- the extent of integration of the use or operation of infrastructure or equipment in carrying on those operations.

**Pre-mining loss allowance**, this refers to losses the project made in earlier years. This enables expenditure (such as exploration expenditure) incurred during the period before a mining project interest comes into existence to reduce a miner’s MRRT liability for a mining project interest for an MRRT year. Pre-mining losses that are unapplied at the end of the MRRT year in which they arise are uplifted by the LTBR plus per cent and may be able to be applied in later years.

**Mining loss allowance**, where the full royalty credits for the year cannot be applied as a royalty allowance, the unused portion is uplifted and carried forward to be applied in a later year. The uplift rate is the long term bond rate plus 7 per cent (LTBR + 7 per cent). If a mining project interest has a loss for the year, the loss is uplifted at LTBR + 7 per cent and carried forward to be used in a later year. When it is applied to reduce a mining profit of the mining project interest in a later year, it is called a mining loss allowance.

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Starting base allowance: this takes into account the value of investments the miner has made before the commencement of the MRRT. Starting base allowances recognise investments in assets (starting base assets) relating to the upstream activities of a mining project interest that existed before the announcement of the resource tax reforms on 2 May 2010. They also recognise certain expenditure on such assets made by a miner between 2 May 2010 and 1 July 2012.

A mining project interest has a starting base allowance if it has profit remaining after using all other higher ranked allowances, and it has one or more starting base losses. Unlike other losses, starting base losses are never transferable to other mining project interests (clauses 80-10, 80-15 and 80-20).

Existing projects will have a starting base equal to either (at the taxpayer's choice):

- the market value of the mine at commencement, which will be written down over a period of up to 25 years. Unlike other costs, this starting base will not be uplifted, or
- the current written down book values of the project’s assets, excluding the value of the resource. This is the most recent book value which will be written down over an accelerated depreciation period of five years. This starting base will be uplifted at the government long term bond rate plus 7 per cent.

Transferred pre-mining loss allowance: Transferred pre-mining loss allowances enable a miner’s MRRT liability for a mining project interest for an MRRT year to be reduced by pre-mining losses relating to certain other pre-mining project interests that the miner has, or from the projects of some closely associated entities (clause 95-1 and subclause 95-20(5)). Clause 95-10 provides a method for working out when a miner has a transferred mining loss and clause 95-15 and clause 95-20 make provision for calculating the amount of a transferred mining loss allowance that may be used, thus placing parameters around it.

Transferred mining loss allowance: the logic underpinning this is to maintain an incentive for mine development because it means a miner is able to use the deductions associated with investments in the construction phase of one or more mining project interests to offset the MRRT liability that arises from another one of its mining project interests that is actually in the production phase. However, this is subject to the interests satisfying a common ownership test from the year the loss arises to the year the loss is applied (clause 100-5 and clause 100-25). Clause 100-10 provides a method for working out when a miner has a transferred mining loss and clause 100-15 makes provision for calculating the amount of a transferred mining loss allowance that may be used.

Transfers of (unused) allowances. The seven allowances operate in a prescribed sequence to reduce the MRRT liability for each mining project to nil. The treatment of any unused allowances is another complex feature of the MRRT design.

Timing rules. The timing rules for the MRRT are somewhat different from the general timing terms used in income tax – mining revenue will be assessable when it is ‘received or receivable,’ in contrast to mining expenditure which will be deductible when it is ‘incurred.’

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