

Response to a question on notice from Senator Cameron, arising from the Select Committee on the Scrutiny of New Taxes, Reference Mining Taxes, Wednesday, 30 March 2011, Melbourne.

Response by Henry Ergas and Jonathan Pincus

The question on notice: *You describe in your paper the RSPT and MRRT as "retrospective" taxes amounting to "appropriation". The normal use of the term 'retrospective' would be taxing income earned before the tax's introduction, which is clearly not the case. You seem to use it to refer to a tax that applies to an income based on any decision made before the tax is introduced. On your definition is income tax a retrospective tax on education, a tax on interest a retrospective tax on saving, any company tax a retrospective tax on investment, rates a retrospective tax on home purchases and even a poll tax a retrospective tax on childbearing?*

Response: The word 'retrospective' is used in the paper as a synonym for the phrase 'ex post', and as the antonym of 'prospective' or the phrase 'ex ante'. In the section of the paper to which Senator Cameron refers, we distinguished between the imposition of a tax that would apply to projects that commenced after the tax was in place (or, by implication, after it was announced), and a tax imposed on projects after they had commenced and become operational. The taxes in question were the Brown tax and its Australian variant, the now-abandoned Resource Super Profits Tax.

The Rudd government's proposed RSPT was not an ordinary income tax on companies. In fact, the Brown tax was developed as an alternative to the ordinary income tax on companies.

The *ex ante* Brown tax is analogised as the government becoming a silent equity partner in the project: in return for receiving say, 40 percent of the future revenues, the government promises to reimburse 40 percent of future outlays—and no revenues or outlays would have yet been received or made. If the project made an overall profit, then the government would make a net gain in public revenue. If the project made an overall loss, then the government would be out of pocket. Thus, under an *ex ante* Brown tax or RSPT the government takes its share (e.g., 40 percent) of the risk that the project may fail.

In contrast, the imposition of a Brown tax or the RSPT on profitable existing mines relieved the government of taking the risk that the project would fail to make an overall profit. There was no proposal for Treasury to seek out the past owners of failed projects, and reimburse them for their losses.

Nor was there any intention under the RSPT to recompense the entities that paid the tax for projects that had failed and had been written off the books. In that respect, the RSPT was like taxing the winning ticket after the lottery had been called, without providing any deduction for purchases of tickets that had failed to win. It was therefore an *ex post* tax with a vengeance.

Moreover, for purposes of the RSPT on existing mines the Rudd government proposed to recognise the book value of past capital outlays, to the extent to which they could be allocated to the resource, as the value of capital to be amortised against future taxable receipts. In most instances, this was vastly smaller than the market value of the mines. This amounted to a partial expropriation of the mines. It is notable that this specific form of expropriation is to be avoided in the MRRT: MRRT taxpayers are to get to choose to use market value or book value.

Nonetheless, the MRRT has its own form of retrospectivity in that, amongst established mines, only the more successful will lose some of their profits.