Dissenting Report:

Mineral Resource Rent Tax Bill 2011 and related bills

Background

The Treasurer referred the Minerals Resource Rent Tax Bill 2011 and 10 related bills to the Standing Committee on Economics on Wednesday 2 November 2011 for report on Monday 21 November 2011.

The bills, totalling more than 525 pages, contain some of the most complex tax changes ever to be introduced into the Parliament.

Yet despite the complexity of the tax changes, and the implications for such things as:

- employment;
- investment;
- industry;
- Australia's international competitiveness;
- the Commonwealth's budget position;
- State and territory revenues; and
- whether small miners are disproportionately impacted;

submissions to the inquiry opened on Thursday 3 November and were due a mere three business days after on Tuesday 8 November 2011.

Two half day hearings were then conducted in Canberra on 8 and 9 November 2011.

The legislative review process has been the antithesis of good policy making and open and transparent government.

Indeed, one witness recorded his "extreme disappointment in relation to the very short period in which to comment on the final composition of [the Government's] unfair, discriminatory and extremely complex tax legislation." [i]

The timeline imposed on the committee by the Treasurer can lead to only one conclusion; that the Government is intent on avoiding proper scrutiny of the bills despite concerns being raised that these new taxes are "untested"[ii] and there is no directly comparable tax scheme anywhere in the world.[iii]

As one witness observed "this is not tax reform; this is a top up tax."[iv] The government should pursue genuine tax reform to achieve lower, fairer and simpler taxes through and open, transparent and inclusive processes.

Consultation process

The committee heard evidence during the inquiry that the design of the government's mining tax was fatally flawed from the beginning.

These views are best summed up by Mr Yasser El-Ansary of the Institute of Chartered Accountants in Australia who stated

> "the government's approach to consultation and policy design in respect of the new resource tax arrangements during the course of 2010 can only be described as abysmal. If there was an international prize for the best worst policy consultation process in a sophisticated open market economy, Australia's efforts during the course of 2010 would win hands down.
>
> But while the consultation process around the original resource super profits tax announced in early May 2010 was bad, the subsequent consultation process that involved striking a deal behind closed doors with three key mining groups in July 2010 was even worse. It would not be unreasonable to say that that represented a low point in Australia's economic and political history. It is a low water mark which most Australians would prefer not to see repeated in our lifetime. I think you would be hard pressed to find anyone to support the view that that is a good way to make public policy decisions."[v]

This view was tacitly acknowledged by Treasury when they were forced to concede that the MRRT "was a deal done at ministerial level."[vi]

The "deal"[vii] involved only the big three big miners, namely BHP, Rio Tinto and Xstrata. It did not include the 350 other miners who would also be effected by the new taxes.[viii] As a result, the small miners argued that the deal that was agreed by the government was to the advantage of the big three miners to the detriment of the smaller miners.

Significantly, the consultation process did not involve consultation with the state governments whose royalties were central to the concerns raised in the Henry Review that state royalties were leading to distortions in investment and production decisions.

Instead, the key elements of this complex tax were designed without consultation with key stakeholders or officials.

Revenue and Fiscal Position of the Government

Before the Coalition lost office in 2007, the fiscal position of the government was strong. The Coalition left no net debt for the incoming Labor Government, having eliminated the $96 billion of net debt it had inherited from the previous Labor Government. The Coalition instead left a surplus of $20 billion and a $60 billion investment in the Future Fund.

In the May Budget 2010-2011, the Treasurer announced a deficit of $49.4 billion and net debt of $107 billion. It was the Treasurer's fourth deficit in four years.

Mr Paul McCullough of Treasury stated in evidence that "the goal is to try to get some revenue." [ix]

Yet despite this goal, it is clear that the revenue raised by the MRRT is highly volatile[x] and is sensitive to changes in such things as the current historic high commodity prices.

The government has chosen to introduce a MRRT package of bills that includes both revenue and expenditure measures. In so doing, the spending will continue to grow as a permanent feature of the architecture of the bills, yet there is no guarantee that the revenue will also continue to increase. In fact, the evidence provided to the committee gave cause for alarm.

According to Treasury's modelling the MRRT and extended PRRT will raise $11.1bn over the last three years of the forward estimates. Since the government released its numbers, NSW and WA have announced increased royalties over this period of $1bn and $2bn respectively. These royalties will be credited against the revenue of the mining taxes. This means that net revenue to the Federal Government will be reduced to $8.1bn.

Under the government's numbers there is a shortfall in revenue relative to spending of $2.8bn over the forward estimates. This "black hole" blows out to $5.7bn after crediting the NSW and WA royalties.

Both the RBA and Access Economics have suggested commodity prices and terms of trade have peaked and are declining a little more rapidly than expected. This creates further downside risks for the mining tax revenue.

It is clear that the spending side of the package is locked in, but the revenue side is subject to the vagaries of the international market and state royalty changes.

The MRRT package will significantly worsen Australia's structural budget deficit over time, with the Government's proposal under-funded beyond the forward estimates.

Government Modelling

Evidence was provided to the Committee that the three big miners will not be paying substantial amounts of MRRT over the next five years or so.

Mr Julian Tapp of Fortescue stated

> "we believe the agreement between the big three mining companies and the government gave such large concessions to them, in terms of the market valuation methodology, attributing a lot of value to resources in the ground, that these resources in the ground will effectively become a huge capital shield that will basically be an

> effective defence against MRRT for certainly much of the initial period of its introduction.” [xi]

Treasury disputed the assumptions built into the model produced by BDO, yet the committee was in the strange position of not being able to evaluate the assumptions in Treasury’s model as these assumptions were not publicly released.[xii]

The lack of transparency around the assumptions built into Treasury’s model was of significant concern to Coalition members, as it was to a great number of witnesses who gave evidence.

Mr El-Ansary from the ICA stated that there should be “full transparency around the underlying assumptions and the underlying modelling” but that this has not occurred.[xiii] Such assumptions are routinely released by other governments and their treasuries, including the WA Department of Treasury.

Using history as a guide Mr El-Ansary went on to state

> **“**If we were to turn back to the implementation of the GST in the late 1990s and the earlier part of 2000, we could probably refer to a much broader comprehensive package of policy design features and economic modelling that evidence exactly what the government at that point in time wanted to achieve, what its expectations were around the impact of a new regime like the GST, in that case, and the impact that that might have on prices throughout the economy, which was clearly one of the most significant impacts of the implementation of the GST at that point.” [xiv]

It concerns the Coalition members that Treasury have not modelled the impact of the MRRT on investment in the mining sector or on jobs growth. [xv]

Mr Murray from BDO stated that the only way to have certainty around the government’s revenue figures is for treasury to conduct a project-by-project calculation of the MRRT, as is required under the legislation for the companies. Treasury conceded that they had not done a project-by-project calculation to determine the revenue that would be generated for the government from the MRRT. Indeed, neither Treasury, nor the ATO could specifically state who would be paying the MRRT.[xvi]

It is hard not to conclude, as Mr Tapp did, that the government has been “sold a pup. It is not until the tax returns are filed that they are going to discover that what they have got is not a piglet bringing home the bacon; it is a pup that is going to require feeding.” [xvii]

Emerging Industries and Small Miners – Thresholds, Compliance and Fairness

Mr Simon Bennison from AMEC provided evidence that

> “expert independent modelling by the University of WA highlights the unfair and discriminatory nature of the MRRT and shows that there will be at least a four per

> cent differential between the level of effective total taxation between a project that was in existence before 2 May 2010 and that applying to less advanced or new developments taking place after 1 July 2012. The modelling shows that before the introduction of the MRRT the average total tax—income tax and royalties—for mining companies would have been around 38 per cent and that post the MRRT the total effective tax rate increases to over 40 per cent for the majors and over 44 per cent for existing and new projects respectively. This means that, under the proposed MRRT regime, a small emerging miner will be paying an extra six per cent in tax compared to a large mature miner that will pay an extra two per cent. This differential is caused by a large tax shield provided to mature miners, who are able to claim a significant deduction for the market value of their starting base assets, and allows them to reduce their MRRT liability for the remaining life of the mine or for 25 years, whichever is the lesser. Small emerging miners are not able to claim such an extensive tax shield and therefore their unit cost of production and ultimate effective tax rate are detrimentally effected." [xviii]

Both AMEC and Fortescue argued that the smaller miners would be paying a disproportionate share of the MRRT.

The Treasury stated that if there were inequities in the MRRT, those inequities were in favour of the small miners. They cited the fact that small miners with MRRT profits less than $50 million in an MRRT year would be relived of the MRRT liability through the low-profit offset. They would not be required to account for MRRT or maintain MRRT related records if they knew that their profits would not exceed the threshold.[xix]

The small miners argued that the $50 million threshold figure was so low as to be meaningless in practical terms. Mr Marcus Hughes of Fortescue stated that a more "practical and realistic measure would be one of production, something along the lines of 10 million tones, which would roughly equate to a $500 million threshold." [xx] Treasury could not explain how the threshold figure of $50 million had been determined other than to reaffirm that the threshold figure had been agreed during the heads of agreement thrashed out by the three big miners.

Smaller miners stated that in practical terms it was "almost impossible" to assume that they wouldn't be paying the MRRT unless they took a very conservative view of commodity prices.[xxi] One miner also stated that the administrative and compliance burden was so significant under the MRRT that they would be forced to hire an additional person just to manage the MRRT administrative arrangements. [xxii]

Mr Brown from Treasury acknowledged that the MRRT, because of its complexity would have "a higher compliance cost for the taxpayer."[xxiii]

The magnetite industry also raised significant concerns that if magnetite was not excluded from the MRRT there would be a "massive new administrative burden to prove we have no liability, the government gets no revenue and we have a huge and unnecessary cost imposed upon our industry." [xxiv]

The magnetite industry stated that the impact of the MRRT on investment would be a loss to the investment in that industry in the "billions of dollars"[xxv] and the impact on jobs and the growth in jobs in WA alone would be "around 5,000 jobs. These are direct. And then from a construction point of view, you can multiply that by about three."[xxvi]

The smaller miners raised other concerns with the MRRT including the fact that smaller miners would not be able to offset their MRRT liabilities with other projects as they were often single project companies.

Sovereign Risk

Sovereign risk is not a phrase that has been traditionally associated with Australia. Once a bastion of security, certainty and safety for international investment, concerns continue to be raised about tax legislation and sovereign risk.

During the inquiry the CEO of the Minerals Council of Australia, Mr Mitchell Hooke explained how the introduction of a mining tax has contributed to increasing the perception of sovereign risk.

Mr Hooke supplied empirical evidence to support his claims that the announcement of the MRRT had a "terrible impact"[xxvii] on Australia's position as one of the safest places to invest.

> "the Fraser Institute in Canada, which is independent, surveys some 400-plus CEOs around the world. They look at 51 jurisdictions of resource rich nations and they actually break them down into provinces. Through that debate we dropped from being 18th out of 51 to being at 31 out of 51 in what they call the public Policy Potential Index."[xxviii]

This submission made by the Chamber of Minerals and Energy of Western Australia (CME) was concerned that:

> "uncertainty around implementation and administration of the new measures increases the risk premium international investors' demand from Australian investment."[xxix]

Similarly there have been reports in the media that "this uncertainty surrounding the MRRT has the potential to increase sovereign risk and reduce competitiveness of the Australian industry, which would have far reaching consequences." [xxx]

At the Commonwealth Business Forum in Perth the Chief Executive of South African Goldminer AngloGold Ashanti, Mr Mark Cutifani stated that Australia is "one of the top sovereign-risk countries in the world on the basis of government policy and its demonstrated behavior in terms of taxation policy and its inconsistency in policy."[xxxi]

The Coalition notes that a perception that Australia is subject to sovereign risk concerns will damage our ability to attract capital investment, thus damaging our economy.

Superannuation

The Government's has chosen to ignore the recommendations of the Henry Tax Review which did not recommend an increase in the superannuation guarantee from 9 to 12 per cent.

Treasury acknowledged that the impact of the increase in the superannuation guarantee on employment would not stimulate employment because an increase in superannuation is a "cost on business."[xxxii] ASFA acknowledges that future wages would most probably be lower as a result of the increase in the superannuation guarantee levy.[xxxiii] This means less take home pay.

There is no direct link between the taxation of the mining sector and superannuation policy – despite assertions by government ministers backed up by its union affiliate members such as United Voice (formerly the Miscellaneous Workers Union). This argument is best summed up by The Australian Chamber of Commerce and Industry where they stated:

> "There is no natural or necessary connection between superannuation policy and the funding of retirement incomes, and taxation policy for the mining and resources sector. They are two separate issues, and both are issues of a substantial policy nature affecting the economy and broader society in potentially profound ways. Both issues require deep and considered policy consideration in their own right.
>
> The mere fact that the government asserts an association on the basis that 'the mining tax is needed to provide workers with better superannuation' (as the govt from Prime Ministerial level down have claimed for over a year) is no reason why the parliament or its committee should compromise on one or other of the issues by dealing with the Bills cognately or jointly." [xxxiv]

Constitutional validity

The Coalition members would have liked to explore the issue of constitutional validity of the MRRT package in more detail.

Despite Treasury assurances that there are no constitutional issues, the Coalition remains concerned that there may constitutional issues with respect to tax on state property and discrimination between states.

Recommendation

That due to the reasons outlined above, the House of Representatives reject all 11 Bills in the package, namely:

- **The Minerals Resource Rent Tax Bill 2011 and the four related minerals Bills;**
- **The Petroleum Resource Rent Tax Assessment Amendment Bill 2011 and the three related petroleum Bills;**
- **The Superannuation Guarantee (Administration) Amendment Bill 2011; and**
- **The Tax Laws Amendment (Stronger, Fairer, Simpler and Other) measures Bill 2011**

Ms Kelly O'Dwyer MP, Deputy Chair

The Hon Tony Smith MP

Mr Scott Buchholz MP

---

[i] Mr Simon Bennison, AMEC, Committee Hansard, Canberra, 9 November 2011, p.24
[ii] Mr Yasser El-Ansary, Institute of Chartered Accountants in Australia, Committee Hansard, Canberra, 9 November 2011, p.14
[iii] Mr Yasser El-Ansary, Institute of Chartered Accountants in Australia, Committee Hansard, Canberra, 9 November 2011, p.14
[iv] Mr Mitch Hooke, MCA, Committee Hansard, Canberra, 9 November 2011, p.16
[v] Mr Yasser El-Ansary, Institute of Chartered Accountants in Australia Committee Hansard, Canberra, 9 November 2011, p.12
[vi] Mr McCullough, Treasury, Committee Hansard, Canberra, 9 November 2011, p.40
[vii] Mr Mitch Hooke, MCA, Committee Hansard, Canberra, 9 November 2011, p.21
[viii] Mr Simon Bennison, AMEC, Committee Hansard, Canberra, 9 November 2011, p.24
[ix] Mr Paul McCullough, Treasury, Committee Hansard, Canberra, 8 November 2011, p.8
[x] Mr Colin Brown, Treasury, Committee Hansard, Canberra, 9 November 2011, p.43
[xi] Mr Julian Tapp, Fortescue, Committee Hansard, Canberra, 9 November 2011, p.1
[xii] Mr Colin Brown, Treasury, Committee Hansard, Canberra, 8 November 2011, p.6
[xiii] Mr Yasser El-Ansary, Institute of Chartered Accountants in Australia, Committee Hansard, Canberra, 9 November 2011, p.14
[xiv] Mr Yasser El-Ansary, Institute of Chartered Accountants in Australia, Committee Hansard, Canberra, 9 November 2011, p.14
[xv] Mr Colin Brown, Treasury, Committee Hansard, Canberra, 8 November 2011, p.16
[xvi] Mr Colin Brown, Treasury, Committee Hansard, Canberra, 9 November 2011, p.42
[xvii] Mr Julian Tapp, Fortescue, Committee Hansard, Canberra, 9 November 2011, p.1
[xviii] Mr Simon Bennison, AMEC, Committee Hansard, Canberra, 9 November 2011, p.24

[xix] Mr Paul McCullough, Treasury, Committee Hansard, Canberra, 8 November 2011, p.2
[xx] Mr Marcus Hughes, Fortescue, Committee Hansard, Canberra, 9 November 2011, p.6
[xxi] Mr Morgan Ball, BC Iron Ltd, Committee Hansard, Canberra, 9 November 2011, p.27
[xxii] Mr Morgan Ball, BC Iron Ltd, Committee Hansard, Canberra, 9 November 2011, p.27
[xxiii] Mr Colin Brown, Treasury, Committee Hansard, Canberra, 8 November 2011, p.17
[xxiv] Mr Bill McKenzie, Magnetite Network, Committee Hansard, Canberra, 8 November 2011, p.22
[xxv] Mrs Megan Anwyl, Magnetite Network, Committee Hansard, Canberra, 8 November 2011, p.26
[xxvi] Mrs Megan Anwyl, Magnetite Network, Committee Hansard, Canberra, 8 November 2011, p.26
[xxvii] Mr. Mitchell Hooke, Minerals Council of Australia, Committee Hansard, Canberra, 9 November2011, P. 22
[xxviii] Mr. Mitchell Hooke, Minerals Council of Australia, Committee Hansard, Canberra, 9 November2011, P. 22
[xxix] Chamber of Minerals and Energy of Western Australia, Submission 5, P. 5
[xxx] 'Miners worried by taxes but hopeful on foreign funding' by Clancy Yates, The Age, 25 August 2011
[xxxi] 'Carbon Tax raises sovereign risk says mine chief' by Damon Kitney, The Australian, 26 October 2011
[xxxii] Mr Paul McBride, Treasury, Committee Hansard, Canberra, 8 November 2011, p.20
[xxxiii] Mr Ross Clare, ASFA, Committee Hansard, Canberra, 8 November 2011, p.43
[xxxiv] Australian Chamber of Commerce and Industry, Submission 8, p.3