JONES DAY

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# AUSTRALIA'S NEW RESOURCES TAX REGIME

Legislation implementing Australia's Mineral Resource Rent Tax ("MRRT") was passed by the House of Representatives on 23 November 2011. The minority Labor government managed to secure support from the Independents and Greens to ensure passage, and the Mineral Resources Rent Tax Bill will now move to the Senate where debate will take place early next year. The MRRT is scheduled to take effect from 1 July 2012.

The House of Representatives also passed an amendment bill to the existing Petroleum Resource Rent Tax ("PRRT") on the same day, extending the coverage of the Petroleum Resource Rent Tax Assessment Act 1987 (Cth) to:

- Cover onshore petroleum projects and the North West Shelf Project;
- Apply the PRRT to shale oil and coal seam gas, but not to the resources that are the subject of the MRRT;
- Make assessable those receipts derived from selling incidental products or providing a service relating to carbon capture and storage produced by the petroleum project; and
- Allow for the payment of other resource taxes to be grossed up and deductible for PRRT purposes so as to avoid double taxation.

The amendments to the PRRT are also scheduled to come into effect from 1 July 2012.

Unlike royalty and excise regimes, which tax the volume or value of the resource extracted or produced, both the PRRT and MRRT are profit-based taxes that tax economic rents generated from relevant resources projects, providing deductions for all allowable capital and revenue expenditure and uplifts for carried forward losses.

The key features of the new MRRT are:

- The tax will apply only to iron ore projects, coal projects and coal seam gas extracted as a necessary incident of coal mining.
- The headline rate of tax will be 30 percent, payable on an individual taxpayer's direct ownership interest in a project, and MRRT is calculated separately for each "mining project interest" of a miner for a MRRT year.

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- The tax will be applied at the "taxing point"—being the closest point to (but not at) extraction as possible. That is, the pricing arrangements to determine the taxable revenue will focus only on the value of the resource extracted less all costs before it enters any significant beneficiation processes (usually just before it is removed from the run-of-mine stockpile).
- Projects will also be entitled to a 25 percent "extraction factor" of the otherwise taxable profit, deductible to recognise the profit attributable to the extraction process (*i.e.*, to tax only the resource profit and provide compensation for miners for the extra returns from such things as managerial expertise, entrepreneurship and technical innovation captured by the tax) which should have the effect, in the absence of any restrictions, of reducing the headline MRRT rate to effectively 22.5 percent.
- Transitional starting base allowances for project interests in existence as at 2 May 2010, which will give the taxpayer a choice of using either a market value or book value approach for determining the value of starting base assets on that date. This will recognise the market value of the capital already invested into the project, which will be deductible over the term of the project (up to a maximum of 25 years). By using book value, recognition of the investment will be accelerated and deductible over five years.
- The uplift rate on unutilised expenditure will be set at the Long Term Bond Rate ("LTBR") plus 7 percent.
- A de minimis exemption will apply for taxpayers with MRRT assessable group profits of $75 million or less, which phases out where the profit is between $75 million and $125 million.
- All expenditure after 1 July 2012 is to be immediately deductible for MRRT on an incurred basis, and any MRRT losses will be transferable to offset MRRT profits the taxpayer has on MRRT taxable operations.
- Carried-forward MRRT losses are to be indexed at the "allowance rate," equal to the LTBR plus 7 percent.
- The MRRT will be an allowable deduction for income tax, and all State and Territory royalties will be creditable against MRRT liability but not transferable or refundable. Any royalties paid and not claimed as a credit will be carried forward at the uplift rate of LTBR plus 7 percent.

The MRRT will only be imposed when profits exceed the LTBR plus 7 percent; thus, the MRRT is more reflective of a tax on profits above a risk-adjusted rate of return than the so-called "super profits tax" (which was a profit above a risk-free rate of return).

The Australian government plans to use the revenue generated by the MRRT to reduce the corporate tax rate to 29 percent from 1 July 2013. Hence, the estimated combined effective tax rate for companies affected by the MRRT will be between 42 percent and 45 percent.

## LAWYER CONTACTS

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